N. J., F. D. 30776–30800 Issued January, 1939

United States Department of Agriculture

FOOD AND DRUG ADMINISTRATION

NOTICES OF JUDGMENT UNDER THE FOOD AND DRUGS ACT

[Given pursuant to section 4 of the Food and Drugs Act]

DRUGS

30776–30800

[Approved by the Acting Secretary of Agriculture, Washington, D. C., October 25, 1939]

30776. Adulteration and misbranding of elixir sulfanilamide. U. S. v. 1 Gallon of Elixir Sulfanilamide. Default decree of condemnation and destruction. (F. & D. No. 40523. Sample No. 58205–C.)

This product was represented to be an elixir of sulfanilamide; whereas it consisted of sulfanilamide in a solution of 75 percent of diethylene glycol (a poison) and 25 percent of water.

On October 20, 1937, the United States attorney for the Northern District of Oklahoma, acting upon a report by the Secretary of Agriculture, filed in the district court a libel praying seizure and condemnation of 1 gallon of elixir sulfanilamide at Tulsa, Okla.; alleging that the article had been shipped in interstate commerce on or about September 29, 1937, by the S. E. Massengill Co., from Kansas City, Mo.; and charging adulteration and misbranding in violation of the Food and Drugs Act. The article was labeled in part: "Elixir Sulfanilamide * * * S. E. Massengill Company * * * Bristol, Tenn.-Va."

The libel alleged that the article was adulterated in that its purity fell below the professed standard under which it was sold, namely, "Elixir Sulfanilamide," since it was not an elixir of sulfanilamide but was a solution of sulfanilamide in a mixture of diethylene glycol and water.

It was alleged to be misbranded in that the statement on the bottle label, "Elixir Sulfanilamide," was false and misleading when applied to an article containing sulfanilamide dissolved in diluted diethylene glycol and in that the statement on the sticker attached to the bottle stopper, "Quality Pharmaceuticals," was false and misleading when applied to an article consisting of a solution of sulfanilamide in diluted diethylene glycol. The article was alleged to be misbranded further in that its label gave the firm address as Bristol, Tenn.-Va.; whereas it had been manufactured at Kansas City, Mo.

No claim was entered for the product. On April 26, 1939, judgment of condemnation was entered and the product was ordered destroyed.

HARRY L. BROWN, *Acting Secretary of Agriculture.*

30777. Misbranding of Menestrex. U. S. v. 47 Bottles and 4 Bottles of Menestrex. Default decree of condemnation and destruction. (F. & D. No. 45086. Sample No. 50249–D.)

The labeling of this product bore false and fraudulent representations regarding its curative and therapeutic effectiveness.

On March 27, 1939, the United States attorney for the Southern District of Mississippi, acting upon a report by the Secretary of Agriculture, filed in the district court a libel praying seizure and condemnation of 47 small bottles and 4 large bottles of Menestrex at Meridian, Miss.; alleging that the article had been shipped in interstate commerce by Rex Laboratory from Nashville, Tenn., within the period from on or about October 7 to on or about December 26, 1938; and charging misbranding in violation of the Food and Drugs Act as amended.

Analysis showed that the article contained quinine sulfate (3.8 grains) and potassium permanganate (0.8 grain) per capsule.

It was alleged to be misbranded in that the statement on the label, "A Scientific Preparation," was false and misleading when applied to an article of the composition stated. It was alleged to be misbranded further in that the following statements in the labeling were statements regarding its curative and therapeutic effects and were false and fraudulent: (Bottle) "Menestrex One Capsule Four Times A Day Three Days Before Menstrual Period"; (circular)

"Menestrex for Delayed Menstruation * * * This preparation if used properly gives relief from the beginning of puberty until the cessation of menses. If taken according to directions you are assured of reasonable results. * * * Prepared and recommended for delayed, scant and painful menses. * * * One capsule four times a day three days before menstrual period."

On September 19, 1939, no claimant having appeared, judgment of condemnation was entered and the product was ordered destroyed.

HARRY L. BROWN, *Acting Secretary of Agriculture.*

30778. Misbranding of gauze bandages. U. S. v. 42 Dozen Gauze Bandages. Default decree of condemnation and destruction. (F. & D. No. 45482. Sample Nos. 51256–D, 51257–D, 51289–D.)

This product had been shipped in interstate commerce and remained unsold and in the original packages. At the time of examination it was found to be contaminated with viable micro-organisms.

On June 10, 1939, the United States attorney for the Eastern District of Pennsylvania, acting upon a report by the Secretary of Agriculture, filed in the district court a libel praying seizure and condemnation of 42 dozen gauze bandages at Philadelphia, Pa.; alleging that the article had been shipped on or about December 27, 1938, by the Meditex Supply Co. from New York, N. Y.; and charging misbranding in violation of the Food and Drugs Act.

The article was alleged to be misbranded in that the statement "Doctors and Nurses" and the design of a nurse and a cross appearing on the labels were false and misleading since they created the impression that the article was sterile and safe for use; whereas it was not sterile and was not safe for use.

On July 5, 1939, no claimant having appeared, judgment of condemnation was entered and the product was ordered destroyed.

HARRY L. BROWN, *Acting Secretary of Agriculture.*

30779. Misbranding of Permacedar Kennel Bedding. U. S. v. Twenty-four 5-Pound and 24 Bushel Bags of Aromatic Permacedar Kennel Bedding. Default decree of condemnation and destruction. (F. & D. No. 45475. Sample No. 52038–D.)

The labeling of this veterinary product bore false and fraudulent representations regarding its curative and therapeutic effects.

On or about June 12, 1939, the United States attorney for the Western District of New York, acting upon a report by the Secretary of Agriculture, filed in the district court a libel praying seizure and condemnation of twenty-four 5-pound and 24 bushel bags of Aromatic Permacedar Kennel Bedding at Rochester, N. Y.; alleging that the article had been shipped in interstate commerce on or about January 28, 1939, by Yoho & Hooker from Youngstown, Ohio; and charging misbranding in violation of the Food and Drugs Act.

Examination showed that the article consisted of shavings from some member of the red-cedar group.

The article was alleged to be misbranded in that the following statements borne on the bag labels were statements regarding its curative or therapeutic effects and were false and fraudulent: "Reduces disease hazard * * * For Dogs * * * This direct contact develops a healthy lustrous coat * * * Permacedar Bedding keeps the feet and hoofs in healthy condition by drawing out all fever."

The libel charged that the article was also misbranded in violation of the Insecticide Act of 1910, reported in notice of judgment No. 1702 published under that act.

On July 19, 1939, no claimant having appeared, judgment of condemnation was entered and the product was ordered destroyed.

HARRY L. BROWN, *Acting Secretary of Agriculture.*

30780. Adulteration and misbranding of tincture of digitalis. U. S. v. 24 Bottles of Tincture of Digitalis. Default decree of condemnation and destruction. (F. & D. No. 45253. Sample Nos. 53458–D, 53459–D.)

This product possessed a potency approximately 30 percent below the standard laid down in the United States Pharamacopoeia for tincture of digitalis.

On April 29, 1939, the United States attorney for the Eastern District of Missouri, acting upon a report by the Secretary of Agriculture, filed in the district court a libel praying seizure and condemnation of 24 bottles of tincture of digitalis at St. Louis, Mo.; alleging that the article had been shipped in interstate commerce on or about January 10, 1939, from Philadelphia, Pa., by

the National Drug Co.; and charging adulteration and misbranding in violation of the Food and Drugs Act.

The article was alleged to be adulterated in that it was sold under a name recognized in the United States Pharmacopoeia, namely, "Tincture Digitalis," but differed from the standard of strength, quality, and purity as determined by the test laid down therein, and its own standard of strength, quality, and purity was not stated on the label.

It was alleged to be misbranded in that the statements on the label, "Tincture Digitalis USPXI" and "Physiologically Standardized," were false and misleading when applied to an article that was materially subpotent.

On June 30, 1939, no claimant having appeared, judgment of condemnation was entered and the product was ordered destroyed.

HARRY L. BROWN, *Acting Secretary of Agriculture.*

30781. Adulteration and misbranding of prophylactics. U. S. v. 26 Gross and 25 Gross of Prophylactics. Default decree of condemnation and destruction. (F. & D. Nos. 44826, 44827. Sample Nos. 45758–D, 45759–D.)

Samples of this product were found to be defective in that they contained holes.

On February 16, 1939, the United States attorney for the Northern District of Illinois, acting upon a report by the Secretary of Agriculture, filed in the district court a libel praying seizure and condemnation of 51 gross of prophylactics at Chicago, Ill.; alleging that the article had been shipped in interstate commerce on or about January 5, 1939, from Akron, Ohio, by Killashun Sales Division; and charging adulteration and misbranding in violation of the Food and Drugs Act. The article was labeled in part "Liquid Latex."

It was alleged to be adulterated in that its strength fell below the professed standard or quality under which it was sold.

Misbranding was alleged in that the following label statements were false and misleading: (Stamped on article) "For Prevention of Disease" and (boxes) "Guaranteed Five Years * * * For Prevention of Disease."

On April 21, 1939, no claimant having appeared, judgment of condemnation was entered and the product was ordered destroyed.

HARRY L. BROWN, *Acting Secretary of Agriculture.*

30782. Misbranding of Dormalgin. U. S. v. 13 Boxes of Dormalgin. Default decree of condemnation and destruction. (F. & D. No. 45233. Sample No. 60114–D.)

The labeling of this product bore false and fraudulent representations regarding its curative and therapeutic effectiveness. Its label also falsely and fraudulently represented that it was an appropriate and harmless medicine, whereas it was not harmless but was a dangerous drug.

On April 28, 1939, the United States attorney for the Northern District of New York, acting upon a report by the Secretary of Agriculture, filed in the district court a libel praying seizure and condemnation of 13 boxes of Dormalgin at Syracuse, N. Y.; alleging that the article had been shipped in interstate commerce on or about April 14, 1938, and January 21, 1939, by Lawson M. Luth from Darien, Conn.; and charging misbranding in violation of the Food and Drugs Act as amended.

Analysis of the article showed that each tablet contained approximately ¾ grain of butyl-B-bromallylbarbituric acid and 2 grains of aminopyrine.

The article was alleged to be misbranded in that the following statements on the carton and in a circular were statements regarding its curative or therapeutic effects and were false and fraudulent: (Carton) "For relief of * * * Toothache * * * Sciatica, Neuritis, Rheumatism, Lumbago, Gout * * * Painful Menstruation"; (circular) "Recommended for the following conditions: * * * Painful Menstruation: 1 tablet, if necessary repeat after three hours. Rheumatism, Gout, Lumbago: 1 tablet each morning and night. If severe, double the dosage. Toothache: 2 tablets. If not relieved 1 more tablet after three hours * * * It is indicated for all painful diseases * * * Dormalgin represents a valuable nerve tonic." The article was alleged to be misbranded further in that the following statements contained in the circular shipped with it were false and misleading and were false and fraudulent since they created the impression that it was an appropriate and harmless medicament for the conditions mentioned therein; whereas it was not as represented but was a dangerous drug: "Dormalgin has been submitted to the most severe laboratory and clinical tests. Prominent clinics and medical men in private practice have conducted the most rigid research examinations.

Physicians qualified to judge such a preparation have repeatedly emphasized the effectiveness, and the harmlessness of Dormalgin. Dormalgin vanishes, so to speak, with the pain, leaving no after effects. When Dormalgin has finished its appointed work it is completely split up. Comparatively speaking, it is burned up in the body and for this reason leaves no disagreeable after effects, such as, benumbed head, lassitude, fatigue or drowsiness. Nothing could be more convincing than the following extracts from medical papers emanating from well-known hospitals, such as, the Second University Medical Clinic of the Charité-Hospital, and the Elizabeth-Diakonissen-Hospital in Berlin, and other scientific papers published by authorities in the medical and dental profession. From the Second Medical University Clinic of the Charité-Hospital, Berlin (Director: Dr. Kraus) Clinical Experiences with a New Analgesic, Dormalgin, by Professor Dr. Erich Leschke, Klinische Wochenschrift vol. 22/1926. 'It is an effective and non-poisonous analgesic free from cumulative, concurrent and after effects. It is completely split up in the human organism. It is indicated for all painful diseases. We have never observed disturbing, detrimental concurrent effects. There is, furthermore, no danger of habit-forming tendencies as is the case with alkaloids containing analgesics.' Dormalgin, an analgesic Free from After Effects by Dr. Paul Basigkow, Berlin. Fortschritte der Therapie 1926. 'Observations from my own practice have shown it to agree with the patients, even in large doses.' '* * * Dormalgin * * * has the advantage of being free from hypnotic, concurrent or after effects.' Dormalgin, a New Analgesic by Dr. Kottke, Berlin-Biesdorf, Praktischer Arzt 1926. 'I have carried out several experiments on my own person, and I have been able to completely substantiate the harmlessness of this preparation.' Dormalgin, by Dr. Jakob, Berlin, Medizinische Klinik, 1926. '* * * not in one single case did Dormalgin produce the slightest detrimental effect on heart and kidneys, even when administered in large doses.' Dormalgin is a scientific development of the J. D. Riedel Company, Berlin, Germany. This concern, which enjoys an international reputation as a manufacturer of the highest grade pharmaceuticals, was founded in 1814, and has developed in the course of the past century a pharmaceutical laboratory world-famous for its products. For a number of years this institution has devoted its research to the development of an effective and harmless analgesic (preparation to relieve pain). There are many preparations now on the market designed to relieve pain, but many of these are ineffective and many of those which will result in relieving pain are actually harmful. They contain narcotics, other dangerous habit-forming drugs, or ingredients which affect the heart and kidneys. And even preparations with Salicylic-acid as a base, such as Aspirin, are not easily tolerated by a large group of people. Dormalgin contains no habitforming or harmful drugs."

On June 22, 1939, no claimant having appeared, judgment of condemnation was entered and the product was ordered destroyed.

HARRY L. BROWN, *Acting Secretary of Agriculture.*

30783. Adulteration and misbranding of oil of sandalwood. U. S. v. Eight Drums of Oil of Sandalwood East Indian USP (and one other seizure action against the same product). Decrees of condemnation. Portion of product released under bond for relabeling; remainder destroyed. (F. & D. Nos. 42898, 43271. Sample Nos. 21518–D, 24355–D.)

This product was labeled to indicate that it was oil of santal of pharmacopoeial standard, whereas it did not have the characteristic odor of oil of santal and it contained added terpineol.

On June 7 and August 15, 1938, the United States attorneys for the Eastern District of Michigan and the Southern District of West Virginia, acting upon reports by the Secretary of Agriculture, filed in their respective district courts libels praying seizure and condemnation of eight drums of oil of sandalwood at Detroit, Mich., and 4½ pounds of oil of sandalwood at Huntington, W. Va.; alleging that the article had been shipped in interstate commerce on or about December 28, 1937, and May 4, 1938, by Magnus, Mabee & Reynard, Inc., from New York, N. Y.; charging adulteration and misbranding in violation of the Food and Drugs Act.

Adulteration was alleged in that the purity of the article fell below the professed standard and quality under which it was sold, namely, "Oil Sandalwood East Indian USP," since it was not the volatile oil distilled with steam from dried heartwood of *Santalum album* Linné; it had not the characteristic odor of oil of santal (sandalwood oil); and it contained terpineol.

Misbranding was alleged in that the statement on the label, "Oil Sandalwood East Indian USP," was false and misleading since it caused the purchaser to believe that the article was sandalwood oil; whereas it did not meet the requirements of the United States Pharmacopoeia for sandalwood oil, since it contained terpineol. A portion of the article was alleged to be misbranded further in that it was offered for sale and sold under the name of another article.

On October 17, 1938, Magnus, Mabee & Reynard, Inc., having filed an answer in the action instituted at Detroit, Mich., admitting the allegations of the libel, judgment of condemnation was entered and the product was ordered released under bond conditioned that it be relabeled "Oil of Sandalwood and Terpineol. For technical use only."

On October 18, 1938, no claim having been entered in the remaining action, judgment of condemnation was entered and the product was ordered destroyed.

HARRY L. BROWN, *Acting Secretary of Agriculture.*

30784. Adulteration and misbranding of cod-liver oil. U. S. v. Six Drums of Non Destearinated Cod Liver Oil. Decree of condemnation. Product released under bond for relabeling. (F. & D. No. 45453. Sample No. 41823-D.)

This product contained approximately three-fourths the amount of vitamin D it was represented to contain.

On June 6, 1939, the United States attorney for the Eastern District of Pennsylvania, acting upon a report by the Secretary of Agriculture, filed in the district court a libel praying seizure and condemnation of six drums of cod-liver oil at Lansdale, Pa.; alleging that the article had been shipped in interstate commerce on or about December 30, 1938, by Wm. J. Wardall, trustee for McKesson & Robbins, Inc., from New York, N. Y.; and charging adulteration and misbranding in violation of the Food and Drugs Act.

The article was labeled in part "160 D." The invoice covering the sale bore the statement "Poultry C L O 160 Vit D 1000 Vit A Per Gram."

It was alleged to be adulterated in that its strength and purity fell below the professed standard under which it was sold, namely, the statement on the label "160 D," and the representation in the invoice to the effect that it contained 160 units of vitamin D per gram, since it did not contain 160 A.O.A.C. chick units of vitamin D per gram, but did contain a less amount.

Misbranding was alleged in that the statement "160 D," borne on the label, was false and misleading, since it represented that the article contained 160 A.O.A.C. chick units of vitamin D per gram; whereas it contained a smaller amount.

On June 26, 1939, McKesson & Robbins, Inc., by Wm. J. Wardall, trustee, having appeared as claimant, judgment of condemnation was entered and the product was ordered released under bond conditioned that it be relabeled under the supervision of this Department.

HARRY L. BROWN, *Acting Secretary of Agriculture.*

30785. Misbranding of Vino San Lazaro and Remedio San Lazaro. U. S. v. 2,275 Cartons of Vino San Lazaro and 1,184 Cartons of Remedio San Lazaro. Consent decrees of condemnation. Products released under bond for relabeling. (F. & D. Nos. 44183, 44184. Sample Nos. 5136-D, 11962-D.)

The labeling of these products bore statements, designs, and devices regarding their curative and therapeutic effects which were false and fraudulent.

On September 17, 1938, the United States attorney for the District of Puerto Rico, acting upon a report by the Department of Health of Puerto Rico, filed in the district court two libels praying seizure and condemnation of 2,275 cartons of Vino San Lazaro and 1,184 cartons of Remedio San Lazaro at Santurce, P. R.; alleging that the articles were in possession of West Indies Patent Medicine Co.; and charging misbranding in violation of the Food and Drugs Act as amended.

Analysis of a sample of Vino San Lazaro showed that it was an aromatic, dark brown water solution containing about 30 percent of sugar, about 14 percent of alcohol, about 1 percent of a phosphate or other phosphorus compound, about 1 percent of protein material, about 0.5 percent of lecithin, and minute traces of copper and manganese possibly as constituents of liver extract. Analysis of a sample of Remedio San Lazaro showed that it was a dark brown sugar sirup containing about 4 percent of salicylate of soda, together with traces of an iodide and of an alkaloidal drug (possibly colchicum), a small amount of cascara, and flavoring material (possibly including sarsaparilla).

The articles were alleged to be misbranded in that the statements, designs, and devices appearing on the bottle label and carton and in the circular were statements regarding their curative or therapeutic effects and were false and fraudulent. The statements in the labeling were as follows: (Vino San Lazaro, bottle and carton, English translation of the Spanish) "Vino San Lazaro (Saint Lazarus Wine) Contains: 236 cc Shake Before Using Dose for adults: 3 tablespoonfuls a day. It well deserves the place of preference in the household. Any person with a concern for the health of his family should prefer this wine which has been used with success for more than a quarter of a century in the civilized countries. Read the instructions. Shake before using. Sold in all pharmacies of Cuba, Mexico, Santo Domingo and Porto Rico. Guaranteed by the Centilac Co. San Juan, P. R."; (circular) "Vino San Lazaro (Saint Lazarus Wine) Combats with success the anemia and chlorosis, purifies the blood, increases the red corpuscles. Old people recover their strength by using it and their physical and mental powers return. It is also recommended in decay, consumption, debility and neurasthenia. It serves as an ideal preventive, increases the bodily resistance to catarrhs and disorders of the chest. It invigorates the entire organism, enabling it to resist the onset of bronchial diseases. Its good results have been tested in the coughs of old persons. These coughs have rapidly disappeared with the first bottle. This powerful tonic will give you the physical energy and mental alertness of perfect health—the capacity for the conquest of life. It enriches the blood, restores the wasted tissues, soothes the excited nerves, induces restorative sleep, revives the appetite and strengthens the digestion. In short, it will place new life, new vigor and new energy in every fibre of your being. Dose for adults; 2 tablespoonfuls a day"; (Remedio San Lazaro, bottle and carton) "Remedio San Lazaro (Saint Lazarus Remedy) Contains: 236 cc It well deserves the place of preference in the household. Any person with a concern for the health of his family should prefer this remedy which has been used with success for more than a quarter of a century in the civilized countries. This patented remedy may be taken at any season of the year. It does not affect the heart or the kidneys. Read the instructions. Shake before using. Sold in all the pharmacies of Cuba, Mexico, Santo Domingo and Porto Rico. Guaranteed by The Centilac Co. San Juan, P. R."; (circular) "Remedio San Lazaro (Saint Lazarus Remedy) The Remedio San Lazaro is now sold in the five continents of the world and the demand for it is due to the fact that, in contrast to the iodated preparations, it does not irritate the throat, does not attack the teeth and does not affect the heart and kidneys. The demand for it is also due to the fact that it does not contain irritating substances and that it is not a palliative which alleviates but a remedy of vigorous action. The Remedio San Lazaro may be used at any season of the year. Dose for adults: three tablespoonfuls a day taken in the following manner: one tablespoonful after breakfast in the morning, which may be dissolved in a little water. Another tablespoonful is taken a half hour before the noonday meal in the same manner. The dose may be increased in some cases to 4 tablespoonfuls a day, according to medical prescription. Children from 6 to 12 years of age will take a tablespoonful before the two principal meals." All labels bore the following design: The figure of a monk, swords, and a dagger suspended over his head, his head bowed and hands clasped, his face and hands disfigured with sores. Prominently displayed below as part of the names were the words "San Lazaro," the patron saint of lepers. A hand, also disfigured by sores, and several medals completed the design.

On October 4, 1938, West Indies Patent Medicine Co., claimant, having admitted the allegations of the libels, judgments of condemnation were entered and the products were ordered released under bond, conditioned that they not be disposed of until properly relabeled.

HARRY L. BROWN, *Acting Secretary of Agriculture.*

30786. Adulteration and misbranding of Q-Tips. U. S. v. 51 Dozen Packages and 50 Dozen Packages of Q-Tips (and 1 other seizure action against the same product). Default decrees of condemnation and destruction. (F. & D. Nos. 45203, 45256. Sample Nos. 45171–D, 60075–D, 60076–D.)

This product was represented to consist of boric-tipped sterilized swabs. It contained, however, but a trace of boric acid and when examined it was contaminated with viable micro-organisms. It had been shipped in interstate commerce and remained unsold and in the original packages.

On April 17 and May 3, 1939, the United States attorneys for the District of New Jersey and the Southern District of Florida, acting upon reports by the Secretary of Agriculture, filed in their respective district courts libels praying seizure and condemnation of 101 dozen packages of Q-Tips at Hackensack, N. J., and 122 packages of Q-Tips at Tampa, Fla.; alleging that the article had been shipped by John M. Maris Co., Inc., in part on or about January 25, 1939, from Philadelphia, Pa., and in part on or about February 20, 1939, from New York, N. Y.; and charging adulteration and misbranding in violation of the Food and Drugs Act.

The article was alleged to be adulterated in that its purity fell below the professed standard or quality under which it was sold, namely, "Sterilized," since it was not sterile but was contaminated with viable micro-organisms.

Misbranding was alleged in that the following statements, designs, and devices appearing in the labeling were false and misleading when applied to an article which was not sterile and, therefore, neither safe nor sanitary, and which contained but an inconsequential trace of boric acid: (Carton, both lots) "Safe and Sanitary Boric Tipped"; (display carton, one lot) "Indispensable for Babies Sterilized"; (carton, other lot) "Sterilized"; (circular accompanying one lot) "Sterilized—Safe—Sanitary Swabs * * * Home-made swabs are dangerous, unsanitary and often carry infection. For the uses described in this folder, doctors recommend Q-Tips. Q-Tips are applicators, made * * * then sterilized. * * * tipped with boric acid. The cellophane wrapper protects Q-Tips from germs * * * To safeguard your family, keep Q-Tips in your medicine cabinet and in the nursery. For the Nursery The use of Q-Tips * * * safeguards baby's health and comfort. Cleansing Baby's Nose: Dip Q-Tip in liquid albolene, insert it only into the lower, expanded part of the nostril and twirl gently several times. * * * Cleansing Eyes: For removing hardened mucus, moisten a Q-Tip with boric Acid solution and wipe away gently. For daily cleansing of eyes, pour a weak boric acid solution on the Q-Tip and let it drip gently into the corner of the eye. * * * Q-Tips are ideally clean * * * Speck in Eye: * * * Remove speck by touching gently with * * * Q-Tip moistened."

On May 19 and June 20, 1939, no claimant having appeared, judgments of condemnation were entered and the product was ordered destroyed.

HARRY L. BROWN, *Acting Secretary of Agriculture.*

30787. Adulteration and misbranding of Earakine. U. S. v. 21 Packages of Earakine. Default decree of condemnation and destruction. (F. & D. No. 44710. Sample No. 46338-D.)

Each package of this product contained a bottle of a liquid and a box of cotton. When examined the cotton was found to be contaminated with viable micro-organisms. The carton bore false and fraudulent representations regarding the curative and therapeutic effectiveness of the article. It had been shipped in interstate commerce and remained unsold and in the original packages.

On January 27, 1939, the United States attorney for the Northern District of Illinois, acting upon a report by the Secretary of Agriculture, filed in the district court a libel praying seizure and condemnation of 21 packages of Earakine at Chicago, Ill.; alleging that the article had been shipped on or about August 6, 1938, by C. S. Dent & Co. from Detroit, Mich.; and charging adulteration and misbranding in violation of the Food and Drugs Act as amended.

Analysis showed that the article consisted essentially of chloral hydrate, a small proportion of opium, phenol, glycerin, and water.

It was alleged to be adulterated in that its strength or purity fell below the professed standard or quality under which it was sold, namely, "Each Package Contains * * * Box Sterilized Cotton," since the cotton was not sterile but was contaminated with viable micro-organisms.

Misbranding was alleged in that the label statement "Each Package Contains * * * Box Sterilized Cotton" was false and misleading. Further misbranding was alleged in that the following statements appearing on the carton were statements regarding the curative and therapeutic effects of the article and were false and fraudulent: "Earakine For the Relief of Earache * * * Pour two or three drops into ear affected."

On March 14, 1939, no claimant having appeared, judgment of condemnation was entered and the product was ordered destroyed.

HARRY L. BROWN, *Acting Secretary of Agriculture.*

30788. Adulteration and misbranding of surgical dressings. U. S. v. Five Gross Packages of Surgical Dressings. Default decree of condemnation and destruction. (F. & D. No. 45515. Sample No. 52418–D.)

This product had been shipped in interstate commerce and remained unsold and in the original unbroken packages. At the time of examination it was found to be contaminated with viable micro-organisms.

On June 22, 1939, the United States attorney for the Western District of Pennsylvania, acting upon a report by the Secretary of Agriculture, filed in the district court a libel praying seizure and condemnation of five gross packages of surgical dressings at Tyrone, Pa.; alleging that the article had been shipped on or about March 30, 1939, by the Antiseptic Products Manufacturing Co. from Baltimore, Md.; and charging adulteration and misbranding in violation of the Food and Drugs Act. The article was labeled in part: "S. A. Antiseptic Surgical Dressing."

It was alleged to be adulterated in that its purity fell below the professed standard or quality under which it was sold, namely, (carton) "Antiseptic gauze" and (circular) "sterilized," since it was not sterile but was contaminated by viable micro-organisms.

Misbranding was alleged in that the following statements in the labeling were false and misleading when applied to an article that was not sterile but was contaminated with viable micro-organisms: (Display carton) "Sterile," "Antiseptic Surgical Dressing," "Antiseptic Gauze," and "Conforms to U. S. Gov't. standards for antiseptic products"; (small carton) "The Antiseptic Surgical Dressing for All Purposes," "Antiseptic Gauze," "A Complete Antiseptic Dressing," "Sterile," and "Conforms to U. S. Gov't. standards for antiseptic products"; (envelope) "Sterile," "Antiseptic," and "This Antiseptic Gauze has been treated by a Special Process to maintain its Sterile and Antiseptic properties even in ordinary handling"; (circular) "Gauze * * * Sterile and Antiseptic * * * the gauze being necessary only in severe bleeding cases."

On July 17, 1939, no claimant having appeared, judgment of condemnation was entered and the product was ordered destroyed.

HARRY L. BROWN, *Acting Secretary of Agriculture.*

30789. Misbranding of Absorbal Dental Absorbents and Absorbal refills. U. S. v. 3 Boxes of Absorbal and 72 Packages of Absorbal Refills. Default decrees of condemnation and destruction. (F. & D. Nos. 45396, 45397. Sample Nos. 48641–D, 48642–D.)

These products had been shipped in interstate commerce and remained unsold and in the original unbroken packages. At the time of examination they were found to be contaminated with viable micro-organisms.

On May 22, 1939, the United States attorney for the District of Minnesota, acting upon a report by the Secretary of Agriculture, filed in the district court a libel praying seizure and condemnation of three boxes of Absorbal Dental Absorbents and 72 packages of Absorbal refills at St. Paul, Minn.; alleging that the articles had been shipped on or about April 28, 1939, by Edward Girvin, D. D. S., from Philadelphia, Pa.; and charging misbranding in violation of the Food and Drugs Act. The articles were labeled, respectively: "Absorbal * * * Gauze Covered Cellucotton * * * The Perfect Dental Absorbent," and "One Reel Refill Absorbal."

The articles were alleged to be misbranded in that the following statements were false and misleading when applied to dental absorbents which were not sterile but which were contaminated with viable micro-organisms, including gas-producing anaerobes: (Absorbal) "The Perfect Dental Absorbent * * * Blue Nurse Products"; refills) "Re Sterilized after packaging."

On July 13, 1939, no claimant having appeared, judgments of condemnation were entered and the products were ordered destroyed.

HARRY L. BROWN, *Acting Secretary of Agriculture.*

30790. Adulteration and misbranding of Ung Nigrum, U. N. Rectal Cones, and U. N. Vaginal Cones. U. S. v. 21 Jars of Ung Nigrum (and 2 similar seizure actions). Default decrees of condemnation and destruction. (F. & D. Nos. 45278, 45279, 45280. Sample Nos. 39442–D, 39443–D, 39444–D.)

These products were labeled to indicate that silver nitrate was the sole therapeutic agent; whereas they contained other therapeutic agents in addition to silver nitrate. The labeling bore false and fraudulent curative and therapeutic claims.

On May 12, 1939, the United States attorney for the District of Oregon, acting upon a report by the Secretary of Agriculture, filed in the district court a libel praying seizure and condemnation of 21 jars of Ung Nigrum, 22 cartons of U. N. Rectal Cones, and 23 cartons of U. N. Vaginal Cones at Portland, Oreg.; alleging that the articles had been shipped in interstate commerce on or about October 4, 1938, by U. N. Laboratories from Seattle, Wash.; and charging adulteration and misbranding in violation of the Food and Drugs Act as amended.

Analyses showed that the Ung Nigrum contained silver nitrate (5.25 percent), mercury (3.35 percent), and phenol (1.68 percent); that the U. N. Rectal Cones contained silver nitrate (0.015 gram), mercury (0.062 gram), and cocoa butter; and that the U. N. Vaginal Cones contained silver nitrate (0.1 gram), mercury (0.02 gram), and gelatin.

The articles were alleged to be adulterated in that their purity fell below the professed standard or quality under which they were sold, namely, $AgNO_3$, since they contained other ingredients in addition to silver nitrate.

Misbranding was alleged in that the following statements in the labeling were statements regarding the curative or therapeutic effects of the articles and were false and fraudulent: (Ung Nigrum, jar) "Apply U. N. Paste freely on burns, fresh or infected wounds, ulcers, * * * and infectious skin diseases"; (Rectal Cones, circular) "They are effective in the treatment of internal hemorrhoids, fissures or rectal inflammation"; (Vaginal Cones, carton) "Indicated in Pelvic Inflammation, Trichomonas and all Vaginal Infections," (circular) "Indicated and effectual in pelvic inflammation, trichomonas and all other infections * * * in acute cases." The Ung Nigrum was also alleged to be misbranded in violation of the Federal Caustic Poison Act reported in notice of judgment No. 91 published under that act.

On June 29, 1939, no claimant having appeared, judgments of condemnation were entered and the products were ordered destroyed.

HARRY L. BROWN, *Acting Secretary of Agriculture.*

30791. Adulteration and misbranding of gauze bandage and gauze pads. U. S. v. 90 Dozen Packages of Gauze Bandage and 50 Cartons of Gauze Pads. Decrees of condemnation. Gauze bandages ordered delivered to a veterans' hospital for sterilization and use; gauze pads ordered destroyed. (F. & D. Nos. 45360, 45481. Sample Nos. 37218–D, 66107–D.)

These products had been shipped in interstate commerce and remained unsold and in the original packages. At the time of examination they were found to be contaminated with viable micro-organisms.

On May 22 and June 9, 1939, the United States attorneys for the Western District of North Carolina and the District of Nebraska, acting upon reports by the Secretary of Agriculture, filed in their respective district courts libels praying seizure and condemnation of 90 dozen packages of Surgical Gauze Bandage at Charlotte, N. C., and 50 cartons of Desco Dispensary Gauze Pads at Lincoln, Nebr.; alleging that the articles had been shipped on or about February 8 and March 8, 1939, from Worcester, Mass., by the Handy Pad Supply Co.; and charging adulteration and misbranding in violation of the Food and Drugs Act.

The articles were alleged to be adulterated in that their strength and purity fell below the professed standard under which they were sold, namely, "Sterilized," since they were not sterile but were contaminated with viable micro-organisms.

They were alleged to be misbranded in that the followiug statements appearing on their labels were false and misleading when applied to articles that were not sterile but were contaminated with viable micro-organisms and were, therefore, not suitable for surgical use: (Gauze bandage) "Sterilized," "Surgical Gauze Bandage," "Sterilized After Packaging," "Prepared Especially for The Medical Profession," and "This bandage has been carefully manufactured under most sanitary conditions, for surgical use"; (gauze pads) "Sterilized after packaging at 250 degrees Farh.," "Prepared for the Medical Profession," and "Dispensary Gauze Pads."

On June 12 and 20, 1939, the consignee of the gauze pads having admitted the allegations of the libel, and no appearance having been entered in the case involving the gauze bandages, judgments of condemnation were entered, and the pads were ordered destroyed and the bandages were ordered delivered to a veterans' hospital for use after having been adequately sterilized.

HARRY L. BROWN, *Acting Secretary of Agriculture.*

30792. Adulteration and misbranding of gauze bandages and first-aid kits. U. S. v. 60 Dozen Gauze Bandages and 26 Dozen First Aid Kits. Default decree of condemnation and destruction. (F. & D. No. 45302. Sample Nos. 47329–D, 47330–D.)

These cases involved rolls of gauze bandages and first-aid kits. The latter contained, among other items, a small roll of gauze bandage and a package of cotton. At the time of examination the bandages and the absorbent cotton were contaminated with viable micro-organisms. They had been shipped in interstate commerce and remained unsold and in the original packages.

On May 11, 1939, the United States attorney for the District of Maryland, acting upon a report by the Secretary of Agriculture, filed in the district court a libel praying seizure and condemnation of 60 dozen gauze bandages and 26 dozen first-aid kits at Baltimore, Md.; alleging that the articles had been shipped on or about November 3 and December 2, 1938, by the American White Cross Laboratories from New York, N. Y.; and charging adulteration and misbranding in violation of the Food and Drugs Act. The articles were labeled in part: "Green Cross Gauze Bandage" and "Lone Ranger First Aid Kits."

The gauze bandages were alleged to be adulterated in that their purity fell below the professed standard or quality under which they were sold, namely, "Sterilized," since they were not sterile but were contaminated with viable micro-organisms. They were alleged to be misbranded in that the label statements "Sterilized After Packaging" and "Surgical Sanitary" were false and misleading when applied to articles which were not sterile but were contaminated with viable micro-organisms.

The first-aid kits were alleged to be adulterated in that their purity fell below the professed standard or quality under which they were sold, namely, (carton containing gauze bandage) "Sterilized," and (enclosed booklet) "White Cross Products are Double Sterilized," since the gauze bandage and the absorbent cotton forming part of the kits were not sterile but were contaminated with viable micro-organisms. They were alleged to be misbranded in that the following statements and representations were false and misleading when applied to an article which contained gauze bandage and absorbent cotton which were not sterile but were contaminated with viable micro-organisms: (Carton containing gauze bandage) "Gauze Bandage Sterilized," "Sterilized After Packaging," "The White Cross of Perfection is Your Protection," and "White Cross Bandages * * * Are Scientifically Prepared under the most sanitary conditions. Absolute satisfaction guaranteed"; (package containing absorbent cotton) "White Cross Surgical Dressings None Better"; (booklet entitled "Here's my First Aid Guide and Book of the Range," enclosed in the kit) "Everybody knows that we have to guard against germs all the time. We wash our food before we eat it and also wash our knives, forks, dishes, glasses. In fact we try to make everything we touch as clean and as free from germs as possible. That's called 'sterilizing'. Even when things aren't completely sterile, the outer covering of our skin is a great natural protection against germs. So it's easy to see that when there's a break in the skin—a wound or cut of any kind—we must be even more careful than usual. That's why it's absolutely essential, that the dressings we use for wounds be completely sterile. And that's why I recommend White Cross Products. I've investigated and examined them. I know that every White Cross product is made of the very best quality. But what's even more important, White Cross products are Double Sterilized. First they're sterilized during the process of manufacture—and then, after they're actually put into their packages, the contents and packages themselves are put through a big machine and Sterilized Again: That means there's not a chance of a germ lurking in any White Cross product you use. Your hand is the first one that touches it after the final sterilization. I know that every one of you will appreciate that this is the kind of protection we want and must have in such important things as first-aid helps. So whenever you have to replace any of the necessities in your Safety Kit—be sure to say you want 'White Cross'. * * * Never let your fingers touch an open wound . . . and never cover the wound with a dirty handkerchief . . . always use White Cross Sterilized Gauze Bandage. * * * First aid directions: Bleeding Wounds with Severe Bleeding Veins . . . Blood is dark red and flows freely but does not spurt. Apply a sterilized gauze pad tightly directly over the wound. Arteries . . . elevate wound; cover with sterilized gauze. * * * Nose bleeding * * *

pack nostril with sterilized gauze or cotton. * * * Cuts and Wounds * * * Apply antiseptic and sterilized gauze dressing."

On June 8, 1939, no claimant having appeared, judgment of condemnation was entered and the products were ordered destroyed.

HARRY L. BROWN, *Acting Secretary of Agriculture.*

30793. Adulteration and misbranding of prophylactics. U. S. v. 89 and 294 Gross of Prophylactics. Default decree of condemnation and destruction. (F. & D. Nos. 45273, 45274. Sample Nos. 58464-D, 58465-D.)

Samples of these products were found to be defective in that they contained holes.

On May 6, 1939, the United States attorney for the Southern District of Indiana, acting upon a report by the Secretary of Agriculture, filed in the district court a libel praying seizure and condemnation of 383 gross of prophylactics at Spencer, Ind.; alleging that the articles had been shipped in interstate commerce on or about December 19, 1938, by the Mayfair Chemical Co. from New York, N. Y.; and charging adulteration and misbranding in violation of the Food and Drugs Act. The articles were labeled: "Gold Town" or "Silver Town."

The articles were alleged to be adulterated in that their strength fell below the professed standard or quality under which they were sold.

They were alleged to be misbranded in that the statements on the cartons, (Gold Town) "For Prevention of Disease," and (Silver Town) "Disease Preventative," were false and misleading.

On June 29, 1939, no claimant having appeared, judgment of condemnation was entered, and the products were ordered destroyed.

HARRY L. BROWN, *Acting Secretary of Agriculture.*

30794. Adulteration and misbranding of rubber prophylactics. U. S. v. 26 Gross of Prophylactics. Default decree of condemnation and destruction. (F. & D. No. 45350. Sample No. 67261-D.)

Samples of this product were found to be defective in that they contained holes.

On May 17, 1939, the United States attorney for the Southern District of New York, acting upon a report by the Secretary of Agriculture, filed in the district court a libel praying seizure and condemnation of 26 gross of prophylactics at New York, N. Y.; alleging that the articles had been shipped in interstate commerce on or about March 16 and 19, 1939, by W. H. Reed & Co., Inc., from Atlanta, Ga.; and charging adulteration and misbranding in violation of the Food and Drugs Act. The articles were labeled in part "Surete."

They were alleged to be adulterated in that their strength fell below the professed standard or quality under which they were sold, since they were sold as prophylactics; whereas they were not suitable for such purpose by reason of the fact that they, or a large percentage thereof, contained perforations or punctures.

Misbranding was alleged in that the statement on the label, "Sold for Prevention of Disease," was false and misleading when applied to prophylactics that were not suitable for the prevention of disease, in that they contained perforations or punctures.

On June 7, 1939, no claimant having appeared, judgment of condemnation was entered and the product was ordered destroyed.

HARRY L. BROWN, *Acting Secretary of Agriculture.*

30795. Misbranding of bandages. U. S. v. 30 Gross, 10 Gross, and 684 Packages of Blue Cross First Aid Bandages. Default decrees of condemnation and destruction. (F. & D. Nos. 45446, 45447, 45455. Sample Nos. 53686-D, 67204-D, 67205-D.)

These products had been shipped in interstate commerce and remained unsold and in the original packages. At the time of examination they were found to be contaminated with viable micro-organisms.

On June 2 and 5, 1939, the United States attorneys for the Southern District of New York and the Eastern District of Michigan, acting upon reports by the Secretary of Agriculture, filed in their respective district courts libels praying seizure and condemnation of 30 gross packages of Mercurochrome bandages and 10 gross of borated bandages at New York, N. Y., and 684 packages of Mercurochrome bandages at Detroit, Mich.; alleging that the articles had been shipped on or about April 24 and May 3, 1939, by the Hampton Manufacturing Co. from Carlstadt, N. J.; and charging misbranding in violation of the Food and Drugs Act.

The articles were alleged to be misbranded in that the statements "For Cuts, Minor Wounds & Abrasions," borne on the labels, were false and misleading since they created the impression that the articles were sterile and safe for use; whereas they were not sterile and were not safe for use.

On June 30 and July 10, 1939, no claimant having appeared, judgments of condemnation were entered and the products were ordered destroyed.

HARRY L. BROWN, *Acting Secretary of Agriculture.*

30796. Misbranding of First-Aid Poc-Kits. U. S. v. 9⅛ Gross Packages of First Aid Poc-Kits. Default decree of condemnation and destruction. (F. & D. No. 45381. Sample No. 66608–D.)

This product had been shipped in interstate commerce and remained unsold and in the original packages. At the time of examination, the first-aid band, gauze bandage, and absorbent cotton contained in the kit were found to be contaminated with viable micro-organisms.

On May 29, 1939, the United States attorney for the Western District of Missouri, acting upon a report by the Secretary of Agriculture, filed in the district court a libel praying seizure and condemnation of 9⅛ gross packages of First Aid Poc-Kits at Kansas City, Mo.; alleging that the article had been shipped on or about March 8, 1939, from Carlstadt, N. J., by Hampton Manufacturing Co.; and charging misbranding in violation of the Food and Drugs Act.

The article was alleged to be misbranded in that the following statements on the kit were false and misleading when applied to an article containing first-aid band, gauze bandage, and absorbent cotton that were contaminated with living micro-organisms: "First-Aid Poc-Kit for all Minor Injuries." "This Kit is your Guard Against Infection," and "Indispensable for all Minor Injuries."

On June 29, 1939, no claimant having appeared, judgment of condemnation was entered and the product was ordered destroyed.

HARRY L. BROWN, *Acting Secretary of Agriculture.*

30797. Adulteration and misbranding of sweet spirit of nitre and paregoric. U. S. v. 228 Bottles of Spirit of Nitre and 852 Bottles of Paregoric. Default decree of condemnation and destruction. (F. & D. Nos. 44440, 44441. Sample Nos. 34684–D, 34685–D.)

These products were sold under names recognized in the United States Pharmacopoeia but differed from the pharmacopoeial standard. They also differed from their own declared standards, since the sweet spirit of nitre was labeled "Ethyl nitrite 4%" but contained ethyl nitrite varying from 2.66 to 2.98 percent, and the paregoric was labeled "Each Fluid Ounce contains ¼ grain of morphia" but contained not more than ⅛ grain of morphia per fluid ounce. Both products were short of the declared volume.

On December 1, 1938, the United States attorney for the Western District of Virginia, acting upon a report by the Secretary of Agriculture, filed in the district court a libel praying seizure and condemnation of 228 bottles of spirit of nitre and 852 bottles of paregoric at Lynchburg, Va., consigned by Kent Drug Co., alleging that the articles had been shipped in interstate commerce on or about October 18, 1938, from Baltimore, Md.; and charging adulteration and misbranding in violation of the Food and Drugs Act as amended.

The articles were alleged to be adulterated in that they were sold under names synonymous with names recognized in the United States Pharmacopoeia, i. e., "Spirit of Ethyl Nitrite," and "Camphorated Tincture of Opium," but differed from the standard of strength, quality, and purity as determined by the tests laid down in said pharmacopoeia, and their own standards were not stated on the labels. Further adulteration of the spirit of niter was alleged in that its strength fell below the professed standard and quality under which it was sold, namely, "Ethyl Nitrite 4%," since it contained less than 4 percent of ethyl nitrate. Further adulteration of the paregoric was alleged in that its strength fell below the professed standard and quality under which it was sold, namely, (carton) "Morphia ¼ Gr. to Fl. Oz." and (bottle) "Each Fluid Ounce Contains ¼ gr. Morphia," since each fluid ounce of the article contained less than ¼ grain of morphia.

The spirit of nitre was alleged to be misbranded in that the statements, (bottle and carton) "Ethyl Nitrite 4%" and (bottle only) "Contains 6 fld. drams or over," were false and misleading and deceived and misled the purchaser since it contained less than 4 percent of ethyl nitrite, and the bottle contained less than 6 fluid drams. The paregoric was alleged to be misbranded in that the statements, (carton) "Morphia ¼ gr. to fl. Oz." and (bottle) "Each Fluid

ounce contains ¼ gr. Morphia * * * Contains 6 fld. Drams or over," were false and misleading and deceived and misled the purchaser, since it contained less than ¼ grain of morphia in each fluid ounce and the bottle contained less than 6 fluid drams.

On June 5, 1939, no claimant having appeared, judgment of condemnation was entered and the products were ordered destroyed.

HARRY L. BROWN, *Acting Secretary of Agriculture.*

30798. Adulteration and misbranding of gauze bandage. U. S. v. 19 Cartons of Gauze Bandage. Default decree of condemnation and destruction. (F. & D. No. 45444. Sample No. 65689–D.)

This product had been shipped in interstate commerce and remained unsold and in the original packages. At the time of examination it was found to contain viable micro-organisms and molds.

On June 2, 1939, the United States attorney for the Northern District of Georgia, acting upon a report by the Secretary of Agriculture, filed in the district court a libel praying seizure and condemnation of 19 cartons of gauze bandage at Atlanta, Ga.; alleging that the article had been shipped on or about April 14, 1939, from Yonkers, N. Y., by Deane Sales Co.; and charging adulteration and misbranding in violation of the Food and Drugs Act.

The article was alleged to be adulterated in that its purity fell below the professed standard under which it was sold, namely, "Gauze Bandage Sterilized," since it was not sterile but was contaminated with viable micro-organisms.

Misbranding was alleged in that the label statement "Gauze Bandage Sterilized" was false and misleading when applied to an article that was not sterile.

On June 28, 1939, no claimant having appeared, judgment of condemnation was entered and the product was ordered destroyed.

HARRY L. BROWN, *Acting Secretary of Agriculture.*

30799. Misbranding of gauze bandage. U. S. v. 12 Gross of Bandages. Default decree of condemnation and destruction. (F. & D. No. 45326. Sample No. 47327–D.)

This product had been shipped in interstate commerce and remained unsold and in the original packages. At the time of examination it was found to be contaminated with viable micro-organisms. It was labeled to indicate that it was sterile.

On May 11, 1939, the United States attorney for the District of Maryland, acting upon a report by the Secretary of Agriculture, filed in the district court a libel praying seizure and condemnation of 12 gross of gauze bandages at Baltimore, Md.; alleging that the article had been shipped from Detroit, Mich., on or about December 21 and 30, 1938, by J. S. Sullivan, Inc., and from New York, N. Y., on or about January 2, 1939, by Arthur N. Fraidin; and charging misbranding in violation of the Food and Drugs Act.

The article was alleged to be misbranded in that the following statements variously appearing in the labeling were false and misleading when applied to an article that was not sterile but was contaminated with viable micro-organisms: (Carton) "Guards Against Infection," "Medi-Band," "Modern All-Purpose Bandage," "Sanitary," "An Excellent First-Aid Bandage," "Directions For Applying, * * * Cover injury with a pad of sterile gauze. Wrap Medi-band around the finger. Pulling Medi-band fairly tight * * *. Follow this method of application wherever Medi-band may be used. * * * It is a necessary first aid kit for home, office and workshop"; (circular enclosed with bandage) "The illustrations [pictures of bandage being wrapped around finger] show the method of applying Medi-Band to an injured finger. * * * you can use Medi-Band on any part of the body * * *. Cover the injury with a pad of the sterile gauze. Then wrap Medi-Band around the finger once, pulling fairly tight."

On June 8, 1939, no claimant having appeared, judgment of condemnation was entered and the product was ordered destroyed.

HARRY L. BROWN, *Acting Secretary of Agriculture.*

30800. Misbranding of aromatic spirits of ammonia and tincture of iodine. U. S. v. The George E. Madison Co. Plea of guilty. Fine, $200. (F. & D. No. 42671. Sample Nos. 28541–D, 39513–D.)

These products were labeled to indicate that they conformed to the standards laid down in the United States Pharmacopoeia and the National Formulary, respectively; whereas the aromatic spirits of ammonia contained a smaller amount of ammonia than required by the pharmacopoeia and the tincture of

iodine contained slightly less iodine and considerably more potassium iodide than prescribed by the formulary.

On March 16, 1939, the United States attorney for the Northern District of California, acting upon a report by the Secretary of Agriculture, filed in the district court an information against the George E. Madison Co., a corporation, San Francisco, Calif., alleging shipment by said company in violation of the Food and Drugs Act on or about July 14 and August 2, 1938, from the State of California into the States of Washington and Oregon, of quantities of aromatic spirits of ammonia and tincture of iodine that were misbranded.

The aromatic spirits of ammonia was alleged to be misbranded in that the statement "Arom. Spirits of Ammonia," borne on the bottle label, was false and misleading since it represented that the article consisted of aromatic spirit of ammonia, a product recognized in the United States Pharmacopoeia, and required by said pharmacopoeia to contain in each 100 cubic centimeters not less than 1.7 grams of total ammonia (NH_3); whereas the article was not aromatic spirit of ammonia since it contained in each 100 cc. not more than 1.005 grams of ammonia.

The tincture of iodine was alleged to be misbranded in that the statement "Churchill N. F. Tinct. Iodine," borne on the bottle label, was false and misleading in that the said statement represented that the article was Churchill's tincture of iodine, a product recognized in the National Formulary and required by said formulary to yield from each 100 cc. not less than 16 grams of iodine, and not more than 4 grams of potassium iodide; whereas it was not Churchill's tincture of iodine in that it contained in each 100 cc. less than 16 grams, namely, not more than 15.45 grams of iodine, and contained more than 4 grams, namely, not less than 7.15 grams of potassium iodide.

On June 19, 1939, a plea of guilty was entered on behalf of the defendant, and the court imposed a fine of $200.

HARRY L. BROWN, *Acting Secretary of Agriculture.*

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U. S. GOVERNMENT PRINTING OFFICE: 1939

N. J., F. D. 30801–30875 Issued January 1940

United States Department of Agriculture

FOOD AND DRUG ADMINISTRATION

NOTICES OF JUDGMENT UNDER THE FOOD AND DRUGS ACT

[Given pursuant to section 4 of the Food and Drugs Act]

30801–30875

FOODS

[Approved by the Acting Secretary of Agriculture, Washington, D. C., November 3, 1939]

30801. Misbranding of butter. U. S. v. 365 Boxes of Butter. Consent decree of condemnation. Product released under bond for relabeling or reprinting. (F. & D. No. 42042. Sample No. 16943–D.)

This product was short weight.

On March 3, 1938, the United States attorney for the Eastern District of Virginia, acting upon a report by the Secretary of Agriculture, filed in the district court a libel praying seizure and condemnation of 365 boxes of butter at Norfolk, Va.; alleging that the article had been shipped in interstate commerce on or about February 18, 1938, by the Fulton Butter & Egg Corporation from New York, N. Y.; and charging misbranding in violation of the Food and Drugs Act. The article was labeled in part: (Boxes) "Butter * * * 60 lb. Net Weight"; (prints) "One lb. Net."

It was alleged to be misbranded in that the declared net weights were false and misleading and tended to deceive or mislead the purchaser.

On March 17, 1938, the Fulton Butter & Egg Corporation, claimant, having admitted the allegations of the libel and having consented to the entry of the decree, judgment of condemnation was entered and the product was ordered released under bond conditioned that it be relabeled or reprinted under the supervision of this Department.

M. L. Wilson, *Acting Secretary of Agriculture.*

30802. Adulteration of frozen fish. U. S. v. 791 Boxes of Frozen Fish (and 10 other seizure actions against similar products). Default decrees of condemnation. Portions of products ordered destroyed; remainder ordered converted into fertilizer. (F. & D. Nos. 43993, 44750, 45026, 45230, 45276, 45290, 45293, 45301, 45304, 45305, 45363, 45441. Sample Nos. 29131–D, 29133–D, 32395–D, 43199–D, 47300–D, 48882–D, 49153–D, 55301–D, 55302–D, 55323–D, 55335–D, 62570–D, 65207–D, 65244–D.)

These products had been shipped in interstate commerce and remained unsold in the original packages. At the time of examination, certain lots were in part decomposed, others contained parasitic worms, and in one lot both conditions were found.

Between the dates of September 22, 1938, and June 1, 1939, the United States attorneys for the Southern District of Georgia, the District of Massachusetts, Northern District of Indiana, Southern District of Indiana, Northern District of Illinois, Western District of Pennsylvania, Eastern District of Louisiana, Western District of Michigan and the District of Columbia, acting upon reports by the Secretary of Agriculture, filed in their respective district courts libels praying seizure and condemnation of the following lots of fish: 791 boxes at Augusta, Ga., 61 boxes at Boston, Mass., 1,058 boxes at Fort Wayne, Ind., 168 boxes at Indianapolis, Ind., 40 cartons at Chicago, Ill., 17 boxes at Pittsburgh, Pa., 15 boxes at New Orleans, La., 69 boxes and 48 cartons at Grand Rapids, Mich., and 100 boxes at Washington, D. C. The libels alleged that the articles had been shipped within the period from on or about September 9, 1938, to on or about May 12, 1939, from Boston, Mass., Vinalhaven, Maine, and Manchester, N. Y., under the following names—Forty Fathom Fisheries, Forty Fathom Fisheries, Division of Bay State Fishing Co., Forty Fathoms, Fathom Fish, Inc., Forty Fathom Fish, Inc., and Forty Fathom Fish Co.; and charged adulteration in violation of the Food and Drugs Act. Certain lots were labeled variously in part: "Forty Fathom Brand Fillets * * * Ocean Perch Cello," "Freshly

Chilled Fillets * * * Forty Fathom Fish," "Cape Anne Ocean Perch," "Whiting Fillets Skins On * * * Seafresh * * * Packed by General Seafoods Corporation," "Stk. Dr. Whiting * * * Cold Seal Fillets," "Blue Ribbon Fancy Skinless Fillets General Seafoods Corporation," "Butterfly Whiting Fillets * * * Packed By Gorton-Pew Fisheries Co. Ltd."

The libels alleged that the articles were adulterated in that portions consisted in whole or in part of filthy animal substances; others consisted in whole or in part of decomposed animal substances; one lot consisted in whole or in part of a filthy and decomposed animal substance; and one lot consisted in whole or in part of a decomposed and putrid animal substance.

Between the dates of April 12, 1939, and July 5, 1939, the Forty Fathom Fisheries, claimant for the lot seized at Augusta, Ga., having withdrawn its claim and no claimant having appeared in the remaining cases, judgments of condemnation were entered and the product was ordered destroyed, with the exception of the lot seized at Chicago, Ill., which was ordered converted into fertilizer.

M. L. WILSON, *Acting Secretary of Agriculture.*

30803. Adulteration of frozen fish. U. S. v. 1,253 Cases of Frozen Fillets (and 1 other seizure action against the same product). Default decrees of condemnation and destruction. (F. & D. Nos. 44743, 44966, 44967, 44968. Sample Nos. 31106–D, 49734–D, 49735–D, 49737–D.)

This product had been shipped in interstate commerce and remained unsold and in the original packages. At the time of examination it was found to be in part decomposed. Certain lots were also found to be infested with parasitic worms.

On January 28 and March 10, 1939, the United States attorneys for the District of Colorado and the Northern District of Texas, acting upon reports by the Secretary of Agriculture, filed in their respective district courts libels praying seizure and condemnation of 1,253 cases of perch fillets at Pueblo, Colo., and 147 cases of perch fillets at Dallas, Tex., consigned by the General Seafoods Corporation; alleging that the articles had been shipped from Boston, Mass., within the period from on or about June 11, 1938, to on or about February 14, 1939; and charging adulteration in violation of the Food and Drugs Act. A portion of the article was labeled in part: "Product of Beacon Fisheries Frozen Fillets Division of Bay State Fish Co., Boston, Mass." The remainder was labeled in part: "Ocean Perch Fillets."

The libels alleged adulteration in that a portion of the article consisted in whole or in part of a decomposed animal substance and the remainder consisted wholly or in part of a filthy, decomposed, and putrid animal substance.

On April 8 and May 8, 1939, no claimant having appeared, judgments of condemnation were entered and the product was ordered destroyed.

M. L. WILSON, *Acting Secretary of Agriculture.*

30804. Adulteration of flour. U. S. v. 16 Sacks of Flour. Default decree of condemnation and destruction. (F. & D. No. 44712. Sample No. 62507–D.)

This product had been shipped in interstate commerce and remained unsold and in the original packages. At the time of examination it was found to be insect-infested.

On January 25, 1939, the United States attorney for the Southern District of Mississippi, acting upon a report by the Secretary of Agriculture, filed in the district court a libel praying seizure and condemnation of 16 sacks of flour at Gulfport, Miss.; alleging that the article had been shipped on or about November 1, 1938, by the Dixie Portland Flour Co. from Mobile, Ala.; and charging adulteration in violation of the Food and Drugs Act. The article was labeled in part: "Packed for Baltic Mills, Vincennes, Ind., Snowdrift * * * Self-Rising Flour."

Adulteration was alleged in that the article consisted wholly or in part of a filthy vegetable substance.

On July 11, 1939, no claimant having appeared, judgment of condemnation was entered and the product was ordered destroyed.

M. L. WILSON, *Acting Secretary of Agriculture.*

30805. Adulteration and misbranding of lemon extract. U. S. v. Nine Cases of Lemon Extract. Default decree of condemnation and destruction. (F. & D. No. 44705. Sample No. 28190–D.)

This product was an artificially colored imitation lemon extract that was deficient in lemon oil.

On January 20, 1939, the United States attorney for the Northern District of California, acting upon a report by the Secretary of Agriculture, filed in the district court a libel praying seizure and condemnation of nine cases of lemon extract at San Francisco, Calif.; alleging that the article had been shipped in interstate commerce from Vancouver, Wash., on or about December 30, 1938; and charging adulteration and misbranding in violation of the Food and Drugs Act. This shipment consisted of goods formerly shipped to Vancouver, Wash., which had been returned by the consignee. The article was labeled in part: "Bake-Rite Pure Lemon Extract Bake-Rite Co. San Francisco."

It was alleged to be adulterated in that an imitation lemon extract deficient in lemon oil had been substituted wholly or in part for it; and in that it was mixed and colored in a manner whereby inferiority was concealed.

It was alleged to be misbranded in that the statements, (case) "Lemon Extract" and (bottle) "Pure Lemon Extract," were false and misleading and tended to deceive and mislead the purchaser when applied to imitation lemon extract deficient in lemon oil and which contained artificial color. It was alleged to be misbranded further in that it was an imitation of and was offered for sale under the distinctive name of another article.

On July 19, 1939, no claimant having appeared, judgment of condemnation was entered and the product was ordered destroyed.

M. L. Wilson, *Acting Secretary of Agriculture.*

30806. Adulteration of butter. U. S. v. 31 Tubs of Butter. Consent decree of condemnation. Product released under bond to be reworked. (F. & D. No. 45548. Sample No. 67370–D.)

This product contained less than 80 percent of milk fat.

On June 29, 1939, the United States attorney for the Southern District of New York, acting upon a report by the Secretary of Agriculture, filed in the district court a libel praying seizure and condemnation of 31 tubs of butter at New York, N. Y.; alleging that the article had been shipped in interstate commerce on or about June 20, 1939, by Kearney Cooperative Creamery from Minden, Nebr.; and charging adulteration in violation of the Food and Drugs Act.

The article was alleged to be adulterated in that a product which contained less than 80 percent by weight of milk fat had been substituted for butter, a product which should contain not less than 80 percent of milk fat as provided by act of March 4, 1923.

On July 17, 1939, Kearney County Cooperative Creamery, claimant, having admitted the allegations of the libel, judgment of condemnation was entered and the product was ordered released under bond, conditioned that it be reworked so that it contain at least 80 percent of milk fat.

M. L. Wilson, *Acting Secretary of Agriculture.*

30807. Adulteration of butter. U. S. v. 20 Packages and 80 Packages of Butter. Default decree of condemnation. Product ordered delivered to a charitable institution. (F. & D. No. 45282. Sample No. 44628–D.)

This product contained less than 80 percent of milk fat.

On April 28, 1939, the United States attorney for the District of New Jersey, acting upon a report by the Secretary of Agriculture, filed in the district court a libel praying seizure and condemnation of 20 packages of sweet butter and 80 packages of salted butter at Bloomfield, N. J.; alleging that the article had been transported in interstate commerce on or about April 25, 1939, by John Tenson from Huff's Church Creamery, Allentown, Pa.; and charging adulteration in violation of the Food and Drugs Act. The article was labeled in part: "Huff's Church Pure Creamery Butter, Moyer Bros. * * * Barto, Pa."

It was alleged to be adulterated in that a product which contained less than 80 percent by weight of milk fat had been substituted for butter, a product which should contain not less than 80 percent of milk fat as provided by act of March 4, 1923.

On August 9, 1939, no claimant having appeared, judgment of condemnation was entered and it was ordered that the labels be destroyed and that the product be delivered to a charitable institution.

M. L. Wilson, *Acting Secretary of Agriculture.*

30808. Adulteration of frozen fish. U. S. v. 379 Boxes of Skinless Fillets. Portion of product condemned and ordered destroyed. Remainder adjudged not adulterated and ordered released under bond. (F. & D. No. 44985. Sample Nos. 41164–D, 41190–D.)

This product had been shipped in interstate commerce and remained unsold and in the original packages. At the time of examination it was found to be in part decomposed.

On March 10, 1939, the United States attorney for the District of Colorado, acting upon a report by the Secretary of Agriculture, filed in the district court a libel praying seizure and condemnation of 379 boxes of frozen cod fillets at Denver, Colo., consigned by Slade Gorton Co.; alleging that the article had been shipped on or about February 9, 1939, from Cleveland, Ohio; and charging adulteration in violation of the Food and Drugs Act.

Adulteration was alleged in that the article consisted wholly or in part of a filthy and decomposed animal substance.

On May 3, 1939, the Seattle Fish Co., Denver, Colo., filed a claim and answer admitting that a portion of the article identified by certain codes was adulterated but denying the charge with respect to the remainder. On the same date the court having found that a portion of the article was adulterated but that the remainder was not, judgment was entered condemning and ordering the destruction of the former, and ordering that the latter be released under bond conditioned that it should not be disposed of in violation of the law.

M. L. Wilson, *Acting Secretary of Agriculture.*

30809. Adulteration of frozen fillets. U. S. v. 100 Boxes of Haddock. Default decree of condemnation and destruction. (F. & D. No. 45399. Sample No. 65226–D.)

This product had been shipped in interstate commerce and remained unsold and in the original packages. At the time of examination it was found to be in whole or in part decomposed.

On May 23, 1939, the United States attorney for the Southern District of Indiana, acting upon a report by the Secretary of Agriculture, filed in the district court a libel praying seizure and condemnation of 100 boxes of haddock fillets at Indianapolis, Ind.; alleging that the article had been shipped on or about May 6, 1939, by Henry & Close, Inc., from Boston, Mass.; and charging adulteration in violation of the Food and Drugs Act.

The article was alleged to be adulterated in that it consisted wholly or in part of a decomposed animal substance.

On June 29, 1939, no claimant having appeared, judgment of condemnation was entered and the product was ordered destroyed.

M. L. Wilson, *Acting Secretary of Agriculture.*

30810. Adulteration of canned oysters. U. S. v. 200 Cases and 1,180 Cases of Canned Oysters. Default decrees of condemnation and destruction. (F. & D. Nos. 44862, 44864. Sample Nos. 36556–D, 37800–D.)

This product contained pieces of shell, many of which were small enough to be swallowed and to lodge in the esophagus and which were also sharp and capable of inflicting injury.

On February 18 and 20, 1939, the United States attorneys for the Southern District of California and the District of Kansas, acting upon reports by the Secretary of Agriculture, filed in their respective district courts libels praying seizure and condemnation of 200 cases of canned oysters at Los Angeles, Calif., and 1,180 cases of canned oysters at Topeka, Kans.; alleging that the article had been shipped in interstate commerce on or about December 8, 1938, and February 1, 1939, by the Mavar Shrimp & Oyster Co., in part from Biloxi, Miss., and in part from New Orleans, La.; and charging adulteration in violation of the Food and Drugs Act. The article was labeled in part: "Del Haven Brand Cove Oysters * * * Packed for Federated Foods, Inc., San Francisco" or "IGA Cove Oysters Packed for Independent Grocers Alliance Distributing Co., Chicago, Illinois."

Adulteration of the article was alleged in that shell fragments had been mixed and packed with it so as to reduce or lower its quality; in that an article containing shell fragments had been substituted wholly or in part for oysters, which it purported to be; and in that it contained an added deleterious ingredient, oyster shell fragments, which might have rendered it injurious to health.

On July 5, 1939, no claimant having appeared for the lot seized at Los Angeles, Calif., judgment of condemnation was entered and the said lot was

ordered destroyed. On July 20, 1939, the Mavar Shrimp & Oyster Co. having entered an appearance in the action instituted in the District of Kansas, but no answer or other pleading having been filed, judgment of condemnation was entered and it was ordered that the product be destroyed and that the intervenor pay costs.

M. L. WILSON, *Acting Secretary of Agriculture.*

30811. Adulteration of candy. U. S. v. 29 Cartons and 17 Cartons of Candy. Default decree of condemnation and destruction. (F. & D. Nos. 43160, 43161. Sample Nos. 37621–D, 37623–D.)

This product had been shipped in interstate commerce and remained unsold and in the original packages. At the time of examination it was found to be insect-infested.

On or about August 6, 1938, the United States attorney for the Northern District of Mississippi, acting upon a report by the Secretary of Agriculture, filed in the district court a libel praying seizure and condemnation of 46 cartons of candy sticks at Tupelo, Miss.; alleging that the article had been shipped on or about February 29, 1938, by the Gilliam Candy Co. from Paducah, Ky.; and charging adulteration in violation of the Food and Drugs Act. The article was labeled in part: "Gilliam's Blue Grass Brand Candies Cello Sticks."

It was alleged to be adulterated in that it consisted wholly or in part of a filthy vegetable substance.

On October 6, 1938, no claimant having appeared, judgment of condemnation was entered and the product was ordered destroyed.

M. L. WILSON, *Acting Secretary of Agriculture.*

30812. Adulteration of butter. U. S. v. 19 Tubs of Butter. Consent decree of condemnation. Product released under bond to be reworked. (F. & D. No. 45551. Sample Nos. 55609–D, 55611–D.)

This product contained less than 80 percent of milk fat.

On June 12, 1939, the United States attorney for the Northern District of Illinois, acting upon a report by the Secretary of Agriculture, filed in the district court a libel praying seizure and condemnation of 19 tubs of butter at Chicago, Ill.; alleging that the article had been shipped in interstate commerce on or about May 25, 1939, by the New Paris Creamery Co. from New Paris, Ind.; and charging adulteration in violation of the Food and Drugs Act.

Adulteration was alleged in that a product containing less than 80 percent by weight of milk fat had been substituted for butter, a product which should contain not less than 80 percent of milk fat as provided by the act of March 4, 1923.

On June 19, 1939, the New Paris Creamery Co., claimant, having admitted the allegations of the libel and having consented to the entry of a decree, judgment of condemnation was entered and the product was ordered released under bond conditioned that it be reworked under the supervision of this Department.

M. L. WILSON, *Acting Secretary of Agriculture.*

30813. Adulteration of canned peaches. U. S. v. 96 Cases of Sliced Peaches. Default decree of condemnation and destruction. (F. & D. No. 45268. Sample No. 62403–D.)

Samples of this product were found to contain a foreign substance having the odor of kerosene.

On May 3, 1939, the United States attorney for the Eastern District of Louisiana, acting upon a report by the Secretary of Agriculture, filed in the district court a libel praying seizure and condemnation of 96 cases of canned peaches at New Orleans, La.; alleging that the article had been shipped in interstate commerce on or about August 17, 1938, by Balfour, Guthrie & Co., Ltd., from San Francisco, Calif.; and charging adulteration in violation of the Food and Drugs Act. The article was labeled: "Sunpakt Brand California Sliced Peaches Distributors Balfour, Guthrie and Co. Limited."

Adulteration was alleged in that a foreign substance having the odor of kerosene had been mixed and packed with the article so as to reduce, lower, or injuriously affect its quality.

On July 14, 1939, no claimant having appeared, judgment of condemnation was entered and the product was ordered destroyed.

M. L. WILSON, *Acting Secretary of Agriculture.*

30814. Adulteration of frozen fish. U. S. v. 900 Boxes of Nordic Skinless Fillets. Default decree of condemnation. (F. & D. No. 44935. Sample No. 58853–D.)

This product had been shipped in interstate commerce and remained unsold and in the original packages. At the time of examination it was found to be in part decomposed.

On or about March 11, 1939, the United States attorney for the Eastern District of Tennessee, acting upon a report by the Secretary of Agriculture, filed in the district court a libel praying seizure and condemnation of 900 boxes of frozen fish at Knoxville, Tenn.; alleging that the article had been shipped in interstate commerce on or about January 17, 1939, by the Atlantic Coast Fisheries Corporation from Provincetown, Mass.; and charging adulteration in violation of the Food and Drugs Act.

The article was alleged to be adulterated in that it consisted wholly or in part of a decomposed animal substance.

On July 7, 1939, no claimant having appeared, judgment of condemnation was entered and the product was ordered destroyed.

M. L. WILSON, *Acting Secretary of Agriculture.*

30815. Adulteration of frozen fish. U. S. v. 528 Boxes of Perch Fillets (and 5 other seizure actions against the same product). Decrees of condemnation. Portion of product ordered destroyed; remainder ordered converted into fertilizer. (F. & D. Nos. 44860, 44861, 44934, 44977, 45025, 45185. Sample Nos. 21864–D, 34870–D, 38861–D, 54354–D, 54640–D, 58852–D.)

This product contained parasitic worms.

On various dates between February 17 and April 12, 1939, the United States attorneys for the Eastern District of Missouri, Northern District of Illinois, Eastern District of Tennessee, and the District of Maryland, acting upon reports by the Secretary of Agriculture, filed in their respective district courts libels praying seizure and condemnation of 140 cases of ocean perch fillets at St. Louis, Mo., 1,923 boxes of perch fillets at Chicago, Ill., 402 boxes of perch fillets at Knoxville, Tenn., and 294 boxes of perch fillets at Baltimore, Md.; alleging that the article had been shipped within the period from on or about December 20, 1938, to on or about April 1, 1939, by General Seafoods Corporation from Boston, Mass.; and charging adulteration in violation of the Food and Drugs Act. The article was labeled in part variously: "Seafresh Quick Frozen Fillets Ocean Perch," "Perch Fillets," "Ocean Perch Freshly Chilled * * * 40 Fathom Fish," or "Cape Ann Ocean Perch Frozen Perch Fillets."

It was alleged to be adulterated in that it consisted wholly or in part of a filthy animal substance.

On various dates between April 8 and July 7, 1939, the consignee of one of the lots seized at Chicago, Ill., having consented to the entry of a decree and no claim or answer having been filed in the remaining cases, judgments of condemnation were entered and the product was ordered destroyed in certain instances and converted into fertilizer in others.

M. L. WILSON, *Acting Secretary of Agriculture.*

30816. Adulteration of frozen fish. U. S. v. 178 Boxes of Ocean Perch Fillets (and 4 other seizure actions against similar products). Default decrees of condemnation. Portion of product ordered destroyed and remainder ordered converted into fertilizer. (F. & D. Nos. 44897, 44926, 44976, 45001, 45199, 45200. Sample Nos. 50374–D, 50399–D, 53106–D, 54619–D, 58744–D.)

This product had been shipped in interstate commerce and remained unsold and in the original packages. At the time of examination it was found to be in part decomposed.

On various dates between February 24 and April 13, 1939, the United States attorneys for the Southern District of Iowa, Northern District of Illinois, Southern District of Ohio, and the Northern District of Alabama, acting upon reports by the Secretary of Agriculture, filed in their respective district courts libels praying seizure and condemnation of 178 boxes of perch fillets at Davenport, Iowa, 54 boxes of H. & G. whiting at Chicago, Ill., 342 boxes of cod fillets at Athens, Ohio, 613 boxes of perch fillets and 1,089 cartons of whiting fillets at Birmingham, Ala.; alleging that the articles had been shipped within the period from on or about August 19, 1938, to on or about April 1, 1939, from Boston, Mass., by General Seafoods Corporation; and charging adulteration in violation of the Food and Drugs Act. Certain lots of the article were labeled in part: "Ocean Perch N. W.," "Freshly Chilled Fillets 40 Fathom Fish," "Ocean Perch Freshly Chilled 40 Fathom Brand," and "Stk. Dr. Whiting W * * * Cold Seal Fillets."

The articles were alleged to be adulterated in that they consisted wholly or in part of decomposed animal substances.

On various dates between April 21 and June 2, 1939, no claimant having appeared, judgments of condemnation were entered and the product was ordered destroyed, with the exception of one lot which was ordered converted into fertilizer.

M. L. Wilson, *Acting Secretary of Agriculture.*

30817. Adulteration of maple sirup. U. S. v. 94 Drums of Maple Sirup (and 2 other seizure actions against the same product). Consent decree of condemnation. Product released under bond for deleading. (F. & D. Nos. 45466, 45492, 45514. Sample Nos. 60637–D, 60735–D, 60736–D, 68969–D.)

This product contained lead.

On June 7, 14, and 21, 1939, the United States attorney for the Eastern District of New York, acting upon reports by the Secretary of Agriculture, filed in the district court libels praying seizure and condemnation of 253 drums of maple sirup at Brooklyn, N. Y.; alleging that the article had been shipped in interstate commerce within the period from on or about May 26 to June 8, 1939, by H. E. Franklin in various shipments from Middlesex, Barton, and Cambridge Junction, Vt.; and alleging adulteration in violation of the Food and Drugs Act.

The article was alleged to be adulterated in that it contained an added poisonous or deleterious ingredient, namely, lead, which might have rendered it injurious to health.

On July 12, 1939, Fred Fear & Co., Brooklyn, N. Y., claimant, having admitted the allegations of the libel and having consented to the entry of decrees, judgments of condemnation were entered, and the product was ordered released under bond conditioned that the maple sirup free from lead contamination be separated from that which was contaminated and that the latter be reconditioned in order to remove the lead content.

M. L. Wilson, *Acting Secretary of Agriculture.*

30818. Adulteration of Limburger cheese. U. S. v. 11 Bundles of Limburger Cheese. Default decree of condemnation and destruction. (F. & D. No. 45508. Sample No. 51238–D.)

Samples of this product were found to contain insect fragments.

On June 19, 1939, the United States attorney for the Eastern District of Pennsylvania, acting upon a report by the Secretary of Agriculture, filed in the district court a libel praying seizure and condemnation of 11 bundles of Limburger cheese at Philadelphia, Pa.; alleging that the article had been shipped in interstate commerce on or about March 8, 1939, by Miller-Richardson Co., of Lowville, N. Y., from Rome, N. Y.; and charging adulteration in violation of the Food and Drugs Act. The article was labeled in part: "Mohawk Valley Brand * * * New York State Limburger."

Adulteration was alleged in that the article consisted in whole or in part of a filthy animal substance.

On July 8, 1939, no claimant having appeared, judgment of condemnation was entered and the product was ordered destroyed.

M. L. Wilson, *Acting Secretary of Agriculture.*

30819. Adulteration of flour. U. S. v. 159 Bags of Flour. Decree of condemnation and destruction. (F. & D. Nos. 45531, 45532. Sample Nos. 62732–D, 62733–D.)

This product had been shipped in interstate commerce and remained unsold and in the original unbroken package. At the time of examination it was found to be insect-infested.

On or about June 28, 1939, the United States attorney for the Southern District of Texas, acting upon a report by the Secretary of Agriculture, filed in the district court a libel praying seizure and condemnation of 159 bags of flour at Harlingen, Tex.; alleging that the article had been shipped within the period from on or about March 31, 1939, to on or about May 25, 1939, from Enid, Okla., by the Pillsbury Flour Mills; and charging adulteration in violation of the Food and Drugs Act. The article was labeled in part: "Pillsbury's Best XXX" or "Extra High Patent Family Circle Flour."

Adulteration was alleged in that the article consisted wholly or in part of a filthy vegetable substance.

On August 1, 1939, no claimant having appeared, judgment of condemnation was entered and the product was ordered destroyed.

M. L. WILSON, *Acting Secretary of Agriculture.*

30820. Adulteration of raisins. U. S. v. 7 Cases and 50 Cases of Raisins. Default decree of condemnation and destruction. (F. & D. No. 45413. Sample Nos. 35155–D, 35156–D.)

This product had been shipped in interstate commerce and remained unsold and in the original package. At the time of examination it was found to be insect-infested.

On May 25, 1939, the United States attorney for the Eastern District of North Carolina, acting upon a report by the Secretary of Agriculture, filed in the district court a libel praying seizure and condemnation of 57 cases of raisins at Wilmington, N. C.; alleging that the article had been shipped on or about August 26, 1938, by the California Packing Corporation from San Francisco, Calif.; and charging adulteration in violation of the Food and Drugs Act. The article was labeled in part: "All Gold Brand [or "Dessert Brand"] Sun Dried Natural Seedless Raisins."

Adulteration was alleged in that the article consisted in whole or in part of a filthy vegetable substance.

On July 10, 1939, no claimant having appeared, judgment of condemnation was entered and the product was ordered destroyed.

M. L. WILSON, *Acting Secretary of Agriculture.*

30821. Adulteration of crab meat. U. S. v. 100 Pounds of Crab Meat (and 7 other seizure actions against the same product). Default decrees of condemnation and destruction. (F. & D. Nos. 45504, 45516, 45517, 45520, 45530, 45537, 45549, 45553. Sample Nos. 37738–D, 60804–D, 60814–D, 62441–D, 62447–D, 62448–D, 62452–D, 62953–D.)

This product contained evidence of the presence of filth.

Between June 9 and June 26, 1939, the United States attorneys for the District of Columbia, District of Maryland, Eastern District of Pennsylvania, and the Northern District of Illinois, acting upon reports by the Secretary of Agriculture, filed in their respective district courts libels praying seizure and condemnation of the following lots of crab meat: 222 pounds at Washington, D. C., 2,390 pounds at Baltimore, Md., 200 pounds at Philadelphia, Pa., and 50 pounds at Chicago, Ill.; alleging that the article had been shipped in interstate commerce within the period from on or about June 6, 1939, to on or about June 20, 1939, by Ed Martin Sea Food Co., Inc., in various shipments from New Orleans, Harvey, and Westwego, La.; and charging adulteration in violation of the Food and Drugs Act.

The article was alleged to be adulterated in that it consisted in whole or in part of a filthy animal substance.

Between July 5 and July 18, 1939, no claimant having appeared, judgments of condemnation were entered and the product was ordered destroyed.

M. L. WILSON, *Acting Secretary of Agriculture.*

30822. Adulteration and misbranding of vanilla extract. U. S. v. 420 Bottles of Filigree Pure Extract Vanilla. Default decree entered. Product ordered delivered to a charitable institution. (F. & D. No. 44638. Sample No. 44788–D.)

This product was represented to be pure vanilla extract. Examination showed that it was a hydroalcoholic solution of artificial vanilla flavor containing little or no true vanilla extract.

On January 5, 1939, the United States attorney for the District of New Jersey, acting upon a report by the Secretary of Agriculture, filed in the district court a libel praying seizure and condemnation of 420 bottles of vanilla extract at Jersey City, N. J.; alleging that the article had been shipped in interstate commerce on or about November 29, 1938, by Certified Extracts, Inc., from New York, N. Y.; and charging adulteration and misbranding in violation of the Food and Drugs Act. The article was labeled in part: (Bottle) "Pure Extract Vanilla Filigree Quality Foods, Inc., Distributors Newark, N. J."

It was alleged to be adulterated in that a hydroalcoholic solution of artificial vanilla flavor that contained little or no true vanilla extract had been substituted for pure extract of vanilla, which it purported to be. It was alleged to be adulterated further in that it was mixed in a manner whereby inferiority was concealed.

The article was alleged to be misbranded in that the statements, (carton) "Pure Extract Vanilla * * * This extract is carefully prepared from the

purest ingredients and is guaranteed to comply with all state and national pure food laws," and (bottle) "Pure Extract Vanilla," were false and misleading and tended to deceive and mislead the purchaser when applied to an article of the composition which this one was found to have. It was alleged to be misbranded further in that it was an imitation of and was offered for sale under the distinctive name of another article.

On August 9, 1939, no claimant having appeared, judgment was entered ordering that the product be delivered to a charitable institution after the labels had been destroyed.

M. L. Wilson, *Acting Secretary of Agriculture.*

30823. Adulteration of crab meat. U. S. v. 32 Pounds, 90 Pounds, and 8 Pounds of Crab Meat. Default decrees of condemnation and destruction. (F. & D. Nos. 45538, 45541. Sample Nos. 23794–D, 62437–D.)

This product contained evidence of the presence of filth.

On June 22 and 23, 1939, the United States attorney for the District of Maryland, acting upon reports by the Secretary of Agriculture, filed in the district court libels praying seizure and condemnation of 130 pounds of crab meat at Baltimore, Md.; alleging that the article had been shipped in interstate commerce on or about June 19 and 20, 1939, by Biloxi Seafood Co. from Biloxi, Miss.; and charging adulteration in violation of the Food and Drugs Act.

The article was alleged to be adulterated in that it consisted in whole or in part of a filthy animal substance.

On July 14, 1939, no claimant having appeared, judgments of condemnation were entered and the product was ordered destroyed.

M. L. Wilson, *Acting Secretary of Agriculture.*

30824. Adulteration of butter. U. S. v. 36 Tubs of Butter. Consent decree of condemnation. Product released under bond to be reworked. (F. & D. No. 45547. Sample No. 55615–D.)

This product contained less than 80 percent by weight of milk fat.

On or about June 22, 1939, the United States attorney for the Northern District of Illinois, acting upon a report by the Secretary of Agriculture, filed in the district court a libel praying seizure and condemnation of 36 tubs of butter at Chicago, Ill.; alleging that the article had been shipped in interstate commerce on or about June 7, 1939, by the Farmers Cooperative Creamery Co. from St. Olaf, Iowa; and charging adulteration in violation of the Food and Drugs Act.

Adulteration was alleged in that a product containing less than 80 percent by weight of milk fat had been substituted for butter, a product which should contain not less than 80 percent of milk fat as provided by the act of March 4, 1923.

On June 26, 1939, the Peter Fox Sons Co., Chicago, Ill., claimant, having admitted the allegations of the libel and having consented to the entry of a decree, judgment of condemnation was entered and the product was ordered released under bond conditioned that it be reworked under the supervision of this Department.

M. L. Wilson, *Acting Secretary of Agriculture.*

30825. Adulteration of butter. U. S. v. 25 Tubs of Butter. Decree of condemnation. Product released under bond to be reworked. (F. & D. No. 45462. Sample No. 69231–D.)

This product contained less than 80 percent of milk fat.

On May 31, 1939, the United States attorney for the District of Massachusetts, acting upon a report by the Secretary of Agriculture, filed in the district court a libel praying seizure and condemnation of 25 tubs of butter at Boston, Mass., consigned about May 19, 1939; alleging that the article had been shipped in interstate commerce by S. S. Borden Co. from Chicago, Ill.; and charging adulteration in violation of the Food and Drugs act.

Adulteration was alleged in that a product containing less than 80 percent by weight of milk fat had been substituted for butter, a product which should contain not less than 80 percent by weight of milk fat, which the article purported to be.

On July 11, 1939, the Buffalo Community Creamery, of Buffalo, Okla., claimant, having admitted the allegations of the libel, judgment of condemnation was entered, and the product was ordered released under bond conditioned that it be reworked so that it contain not less than 80 percent by weight of milk fat.

M. L. Wilson, *Acting Secretary of Agriculture.*

30826. Adulteration and misbranding of imitation flavors. U. S. v. 2 Bottles of Imitation Wild Cherry Flavor and 1 Bottle of Imitation Strawberry Flavor. Default decree of condemnation and destruction. (F. & D. Nos. 41317, 41318. Sample Nos. 36786-C, 36787-C.)

These products contained about 40 percent and 80 percent, respectively, of a glycol or a glycol ether, or both, poisons.

On January 4, 1938, the United States attorney for the Middle District of Tennessee, acting upon a report by the Secretary of Agriculture, filed in the district court a libel praying seizure and condemnation of 3 gallon bottles of the above-named imitation flavors at Nashville, Tenn.; alleging that the articles had been shipped in interstate commerce on or about October 7, 1937, by Alex Fries & Bros., Inc., from Cincinnati, Ohio; and charging adulteration in violation of the Food and Drugs Act.

Adulteration was alleged in that products containing a poisonous substance, namely, a glycol or a glycol ether, or both, had been substituted wholly or in part for "Imitation Wild Cherry Flavor-Hard Candy" and "Imitation Strawberry-Flavor Hard Candy." Adulteration was alleged further in that the articles contained an added poisonous or deleterious ingredient, namely, a glycol, or a glycol ether, or both, which might have rendered them injurious to health.

Misbranding was alleged in that the statements on the labels, "Imitation Wild Cherry Flavor" and "Imitation Strawberry Flavor," were false and misleading and tended to deceive and mislead the purchaser. The articles were alleged to be misbranded further in that they were offered for sale under the distinctive names of other articles, namely, food flavors.

On September 21, 1938, no claimant having appeared, judgment of condemnation was entered and the products were ordered destroyed.

M. L. Wilson, *Acting Secretary of Agriculture.*

30827. Adulteration of frozen fish. U. S. v. 127 Boxes of Perch Fillets (and 4 other seizure actions against similar products). Default decrees of condemnation. Certain lots ordered destroyed; remainder ordered converted into fertilizer. (F. & D. Nos. 44841, 44843, 44844, 44942, 45221. Sample Nos. 51429-D, 53058-D, 53059-D, 54315-D, 54343-D.)

These products had been shipped in interstate commerce and remained unsold and in the original packages. At the time of examination certain lots were found to be in part decomposed; others contained parasitic worms.

On various dates between February 17 and April 21, 1939, the United States attorneys for the Northern District of Illinois, the Southern District of Iowa, the Northern District of Iowa, and the Eastern District of Pennsylvania, acting upon reports by the Secretary of Agriculture, filed in their respective district courts libels praying seizure and condemnation of 127 boxes of red perch fillets and 35 boxes of whiting at Chicago, Ill., 238 boxes of ocean perch at Davenport, Iowa, 100 boxes of red perch fillets at Cedar Rapids, Iowa, and 960 boxes of skinless fillets at Philadelphia, Pa.; alleging that the articles had been shipped within the period from on or about January 28, 1939, to on or about April 17, 1939, in part from Gloucester, Mass., and in part from Cleveland, Ohio, by Slade Gorton Co.; and charging adulteration in violation of the Food and Drugs Act. The articles were labeled in part: "Ocean Perch," "Cape Ann H and G Trap Whiting," "Red Perch Fillets," and "Frozen Icybay Skinless Cape Blue Fillets."

Portions were alleged to be adulterated in that they consisted wholly or in part of decomposed animal substances, others in that they consisted wholly or in part of filthy animal substances.

On March 27, April 24, and May 25 and 29, 1939, no claimant having appeared, judgments of condemnation were entered and the lots seized at Chicago, Ill., were ordered converted into fertilizer and the remaining lots were ordered destroyed.

M. L. Wilson, *Acting Secretary of Agriculture.*

30828. Adulteration of crab meat. U. S. v. 192 Pounds of White Crab Meat. Default decree of condemnation and destruction. (F. & D. No. 45529, Sample No. 62952-D.)

This product contained evidence of the presence of filth.

On June 9, 1939, the United States attorney for the District of Maryland, acting upon a report by the Secretary of Agriculture, filed in the district court a libel praying seizure and condemnation of 192 pounds of crab meat at Baltimore, Md.; alleging that the article had been shipped in interstate commerce

on or about June 6, 1939, by St. Mary Seafood Co. from Morgan City, La.; and charging adulteration in violation of the Food and Drugs Act.

The article was alleged to be adulterated in that it consisted in whole or in part of a filthy animal substance.

On July 5, 1939, no claimant having appeared, judgment of condemnation was entered and the product was ordered destroyed.

M. L. WILSON, *Acting Secretary of Agriculture.*

30829. Adulteration of butter. U. S. v. 99 Tubs of Butter. Consent decree of condemnation. Product released under bond to be reworked. (F. & D. No. 45544. Sample No. 55610–D.)

This product contained less than 80 percent of milk fat.

On or about June 14, 1939, the United States attorney for the Northern District of Illinois, acting upon a report by the Secretary of Agriculture, filed in the district court a libel praying seizure and condemnation of 99 tubs of butter at Chicago, Ill.; alleging that the article had been shipped in interstate commerce on or about June 1, 1939, by Buffalo Community Creamery from Buffalo, Okla.; and charging adulteration in violation of the Food and Drugs Act.

The article was alleged to be adulterated in that a product which contained less than 80 percent by weight of milk fat had been substituted for butter, a product which should contain not less than 80 percent of milk fat as provided by act of March 4, 1923.

On June 15, 1939, Buffalo Community Creamery, claimant, having admitted the allegations of the libel, judgment of condemnation was entered and the product was ordered released under bond conditioned that it be reworked to the legal standard.

M. L. WILSON, *Acting Secretary of Agriculture.*

30830. Adulteration of crab meat. U. S. v. 47 Pound Cans of Crab Meat. Default decree of condemnation and destruction. (F. & D. No. 45506. Sample No. 62444–D.)

This product contained evidence of the presence of filth.

On June 16, 1939, the United States attorney for the District of Columbia, acting upon a report by the Secretary of Agriculture, filed in the district court a libel praying seizure and condemnation of 47 pounds of crab meat at Washington, D. C.; alleging that the article had been shipped in interstate commerce on or about June 13, 1939, by Geo. Martin Sea Food Co. from Harvey, La.; and charging adulteration in violation of the Food and Drugs Act.

The article was alleged to be adulterated in that it consisted of a filthy animal substance.

On July 11, 1939, no claimant having appeared, judgment of condemnation was entered and the product was ordered destroyed.

M. L. WILSON, *Acting Secretary of Agriculture.*

30831. Adulteration and misbranding of feeds. U. S. v. 400 Sacks of Draco Flour Middlings and 70 Sacks of Farmso Red Dog. Default decree of condemnation and destruction. (F. & D. No. 41775. Sample Nos. 4925–D, 4926–D.)

Other substances had been substituted in whole or in part for each of these products.

On February 18, 1938, the United States attorney for the District of Massachusetts, acting upon a report by the Secretary of Agriculture, filed in the district court a libel praying seizure and condemnation of 470 sacks of feeds at Worcester, Mass.; alleging that the articles had been shipped in interstate commerce on or about August 7 and December 21, 1937, from Baltimore, Md., by P. Fred'k Obrecht & Son; and charging adulteration and misbranding in violation of the Food and Drugs Act. The articles were labeled in part: "Draco Flour Middlings * * * Ingredients Wheat Middlings-Feed Flour Dried Grains Corporation Baltimore, Md."; and "Farmso Red Dog * * * Manufactured by Farmers Service Bureau Baltimore, Md."

The articles were alleged to be adulterated in that a mixture of wheat products and cassava meal had been substituted in whole or in part for flour middlings, and in that a mixture of wheat flour and tissues, rye flour and tissues, and cassava meal had been substituted in whole or in part for red dog, a wheat byproduct.

Misbranding was alleged in that the statement "Flour Middlings" was false and misleading and tended to deceive and mislead the purchaser when applied

to an article which, in addition to wheat products, contained a considerable amount of cassava meal; and in that the statement "Red Dog" was false and misleading and tended to deceive and mislead the purchaser when applied to an article which, in addition to wheat flour and tissues, contained considerable amounts of rye flour and tissues, and cassava meal, since "Red Dog" means a wheat byproduct and not a byproduct of other grains. The articles were alleged to be misbranded further in that they were offered for sale under the distinctive names of other articles.

On January 30, 1939, no claimant having appeared, judgment of condemnation was entered and the products were ordered destroyed.

M. L. Wilson, *Acting Secretary of Agriculture.*

30832. Adulteration of frozen fish. U. S. v. 20,000 Pounds of H & G Whiting (and 3 other seizure actions against similar products). Default decrees of condemnation and destruction. (F. & D. Nos. 44982, 45024, 45187, 45188, 45425. Sample Nos. 37374–D, 43509–D, 43510–D, 53506–D, 57805–D.)

These products had been shipped in interstate commerce and remained unsold and in the original packages. At the time of examination they were found to be in part decomposed.

On various dates between March 8 and April 13, 1939, the United States attorneys for the Eastern District of Missouri, District of Nebraska, Western District of Washington, and the Southern District of California, acting upon reports by the Secretary of Agriculture, filed in their respective district courts libels praying seizure and condemnation of 20,000 pounds of whiting at St. Louis, Mo., 1,312 boxes of whiting at Grand Island, Nebr., 68 cases of haddock fillets and 57 cases of skinless fillets at Seattle, Wash., and 261 cases of pollack fillets at Los Angeles, Calif. The libels alleged that the lots at Seattle, Wash., had been shipped from Gloucester, Mass., to San Francisco, Calif., on or about November 22, 1937, and August 20, 1938, by the Gorton-Pew Fisheries Co., Ltd., and had been reshipped to Seattle on or about April 5, 1939, by the Merchants Ice & Cold Storage Co.; that the remaining lots had been shipped by the Gorton-Pew Fisheries Co., Ltd., from Gloucester, Mass., to the point where seized within the period from on or about January 4, 1938, to on or about February 27, 1939, and that the article was adulterated in violation of the Food and Drugs Act. Certain lots were labeled in part: "H & G Whiting," "Gorton's Fresh Frosted Fillets Haddock," "Gorton's Fancy Skinless Fillets," and "Clipper Brand Skinless Pollock Fillets."

The articles were alleged to be adulterated in that they consisted wholly or in part of decomposed animal substances.

On March 30, and June 7, 12, and 26, 1939, no claimant having appeared, judgments of condemnation were entered and the products were ordered destroyed.

M. L. Wilson, *Acting Secretary of Agriculture.*

30833. Adulteration of butter. U. S. v. 33 Tubs and 19 Tubs of Butter. Consent decree of condemnation. Product released under bond for denaturing or reworking. (F. & D. Nos. 44755, 44817. Sample Nos. 54112–D, 54113–D.)

This product contained less than 80 percent of milk fat; a portion also contained added mineral oil.

On January 11 and 13, 1939, the United States attorney for the Northern District of Illinois, acting upon reports by the Secretary of Agriculture, filed in the district court libels praying seizure and condemnation of 52 tubs of butter at Chicago, Ill.; alleging that the article had been shipped in interstate commerce on or about August 27 and September 23, 1938, by Salt City Creamery from Hutchinson, Kans.; and charging adulteration in violation of the Food and Drugs Act.

Both lots were alleged to be adulterated in that a product which contained less than 80 percent by weight of milk fat had been substituted for butter, a product which should contain not less than 80 percent milk fat as provided by act of March 4, 1923. One lot was alleged to be adulterated further in that mineral oil had been substituted in part for butterfat.

On March 2, 1939, Salt City Creamery, claimant, having admitted the allegations of the libels and the cases having been consolidated, judgment of condemnation was entered and the product was ordered released under bond conditioned that it be denatured or reworked as required. The butter that was low in milk fat and not otherwise adulterated was reworked to the legal

standard, and the butter containing mineral oil was converted into inedible grease.

M. L. WILSON, *Acting Secretary of Agriculture.*

30834. Misbranding of canned tomatoes. U. S. v. 498 Cases of Canned Tomatoes. Consent decree of condemnation. Product released under bond to be relabeled. (F. & D. No. 42124. Sample No. 10907–D.)

This product was substandard because of the presence of excessive peel, and it was not labeled to indicate that it was substandard.

On April 5, 1938, the United States attorney for the Middle District of Tennessee, acting upon a report by the Secretary of Agriculture, filed in the district court a libel praying seizure and condemnation of 498 cases of canned tomatoes at Nashville, Tenn.; alleging that the article had been shipped in interstate commerce on or about October 1, 1937, by Pekin Packing Co. from Pekin, Ind.; and charging misbranding in violation of the Food and Drugs Act. The article was labeled in part: "Washington County Brand Hand Packed Tomatoes."

It was alleged to be misbranded in that it was canned food and fell below the standard of quality and condition promulgated by the Secretary of Agriculture, since the tomatoes were not peeled in accordance with said standard, the average amount of peel per pound of net contents exceeding 1 square inch, and its labels did not bear a plain and conspicuous statement prescribed by regulation of this Department indicating that it fell below such standard.

On June 15, 1939, C. B. Ragland & Co., Nashville, Tenn., claimant, having admitted the allegations of the libel, judgment of condemnation was entered and the product was ordered released under bond to be relabeled in compliance with the law.

M. L. WILSON, *Acting Secretary of Agriculture.*

30835. Adulteration of maple sirup. U. S. v. 82 Drums and 43 Drums of Maple Sirup. Decrees ordering product released under bond to be deleaded. (F. & D. Nos. 45369, 45370. Sample Nos. 60015–D, 60016–D.)

This product contained lead.

On May 22, 1939, the United States attorney for the District of Vermont, acting upon a report by the Secretary of Agriculture, filed in the district court libels praying seizure and condemnation of 125 drums of maple sirup at St. Albans, Vt.; alleging that the article had been shipped in interstate commerce on or about May 8, 1939, by Fairfield Farms Maple Co. from Croghan, N. Y.; and charging adulteration in violation of the Food and Drugs Act.

The article was alleged to be adulterated in that it contained an added poisonous or deleterious ingredient, lead, which might have rendered it injurious to health.

On June 5, 1939, John Brigham, St. Albans, Vt., claimant, having admitted the allegations of the libels, judgments were entered ordering that the product be released under bond conditioned that it be deleaded in order to remove the deleterious ingredient.

M. L. WILSON, *Acting Secretary of Agriculture.*

30836. Adulteration of maple sirup. U. S. v. 69 Drums of Maple Sirup. Decree of condemnation. Product ordered released under bond to be deleaded. (F. & D. No. 45436. Sample Nos. 60012–D, 68947–D.)

This product contained lead in an amount which might have rendered it injurious to health.

On June 1, 1939, the United States attorney for the District of Vermont, acting upon a report by the Secretary of Agriculture, filed in the district court a libel praying seizure and condemnation of 69 drums of maple sirup at St. Albans, Vt.; alleging that the article had been shipped in interstate commerce on or about May 6, 1939, by American Maple Products Corporation from Canton, N. Y.; and charging adulteration in violation of the Food and Drugs Act.

The article was alleged to be adulterated in that it contained an added poisonous or deleterious ingredient, lead, which might have rendered it injurious to health.

On June 6, 1939, American Maple Products Corporation, claimant, having admitted the allegations of the libel, judgment of condemnation was entered and the product was ordered released under bond conditioned that it be deleaded in order to remove the deleterious ingredient.

M. L. WILSON, *Acting Secretary of Agriculture.*

30837. Adulteration of crab meat. U. S. v. 3 Barrels of White Crab Meat. Default decree of condemnation and destruction. (F. & D. No. 45539. Sample No. 23795–D.)

This product contained evidence of the presence of filth.

On June 23, 1939, the United States attorney for the District of Maryland, acting upon a report by the Secretary of Agriculture, filed in the district court a libel praying seizure and condemnation of 3 barrels of crab meat at Baltimore, Md.; alleging that the article had been shipped in interstate commerce on or about June 20, 1939, by the C. C. Co. from Biloxi, Miss.; and charging adulteration in violation of the Food and Drugs Act.

The article was alleged to be adulterated in that it consisted in whole or in part of a filthy animal substance.

On July 14, 1939, no claimant having appeared, judgment of condemnation was entered and the product was ordered destroyed.

M. L. WILSON, *Acting Secretary of Agriculture.*

30838. Adulteration of frozen fish. U. S. v. 191 Boxes and 200 Cartons of Ocean Perch Fillets. Default decrees of condemnation and destruction. (F. & D. Nos. 45113, 45156. Sample Nos. 28420–D, 37388–D, 57278–D.)

These products contained parasitic worms.

On April 1 and 6, 1939, the United States attorneys for the District of Nebraska and the Western District of Washington, acting upon reports by the Secretary of Agriculture, filed in their respective district courts libels praying seizure and condemnation of 191 boxes of ocean perch fillets at Grand Island, Nebr., and 200 cartons of ocean perch fillets at Seattle, Wash.; alleging that the article had been shipped on or about August 30, 1938, and March 4, 1939, from Gloucester, Mass., by Gorton-Pew Fisheries Co., Ltd.; and charging adulteration in violation of the Food and Drugs Act. The articles were labeled in part: "Gorton's Fresh Frosted Fillets Ocean Perch," or "Ocean Perch Frozen."

The articles were alleged to be adulterated in that they consisted wholly or in part of filthy animal substances.

On June 14 and 26, 1939, no claimant having appeared, judgments of condemnation were entered and the products were ordered destroyed.

M. L. WILSON, *Acting Secretary of Agriculture.*

30839. Adulteration of crab meat. U. S. v. 97 Pounds, 16 Barrels, and 1 Barrel of Crab Meat. Default decrees of condemnation and destruction. (F. & D. Nos. 45519, 45542, 45550. Sample Nos. 60816–D, 62453–D, 62907–D.)

This product contained evidence of the presence of filth.

On June 22 and 23, 1939, the United States attorneys for the District of Columbia, District of Maryland, and the Eastern District of Pennsylvania, acting upon reports by the Secretary of Agriculture, filed in their respective district courts libels praying seizure and condemnation of 97 pounds of crab meat at Washington, D. C., 16 barrels at Baltimore, Md., and 1 barrel of crab meat at Philadelphia, Pa.; alleging that the article had been shipped in interstate commerce on or about June 19 and 20, 1939, by Reuthers Seafood Co., Inc., from New Orleans, La.; and charging adulteration in violation of the Food and Drugs Act.

The article was alleged to be adulterated in that it consisted in whole or in part of a filthy animal substance.

On July 11, 14, and 17, 1939, no claimant having appeared, judgments of condemnation were entered and the product was ordered destroyed.

M. L. WILSON, *Acting Secretary of Agriculture.*

30840. Adulteration of maple sirup. U. S. v. 83 Drums of Maple Sirup (and 13 other seizure actions against the same product). Product released under bond to be deleaded. (F. & D. Nos. 45377, 45378, 45395, 45407, 45408, 45428, 45430, 45434, 45435, 45474, 45477, 45478. Sample Nos. 31679–D, 44339–D, 44340–D, 52509–D, 52510–D, 60002–D, 60004–D, 60011–D, 60019–D, 60526–D, 60527–D, 60528–D, 60533–D, 68938–D, 68940–D, 68941–D, 68942–D, 68944–D, 68946–D, 68952–D, 68970–D.)

This product contained lead in an amount which might have rendered it injurious to health.

Between May 22 and June 8, 1939, the United States attorney for the District of Vermont, acting upon reports by the Secretary of Agriculture, filed in the district court libels praying seizure and condemnation of a total of 958 drums of maple sirup at Burlington, Vt.; alleging that the article had been shipped in interstate commerce in various shipments from Arcade, Sherman, Harrisville,

De Kalb Junction, Clymer, Canton, De Ruyter, Croghan, Cortland, and Adams, N. Y., and Middlefield, Ohio, within the period from on or about May 1 to May 19, 1939, by United Maple Products, Ltd.; and charging adulteration in violation of the Food and Drugs Act.

The article was alleged to be adulterated in that it contained an added poisonous or deleterious ingredient, namely, lead, which might have rendered it injurious to health.

On June 5, 8, and 15, 1939, the United Maple Products, Ltd., trading at Burlington, Vt., having appeared as claimant and having admitted the allegations of the libels, judgments were entered ordering that the product be released under bond conditioned that the deleterious ingredient be removed by deleading.

M. L. Wilson, *Acting Secretary of Agriculture.*

30841. Adulteration of frozen fish. U. S. v. 200 Boxes of Ocean Perch and 75 Boxes of Haddock. Default decrees of condemnation and destruction. (F. & D. Nos. 45152, 45458. Sample Nos. 53556–D, 53558–D, 55343–D.)

These products had been shipped in interstate commerce and remained unsold and in the original packages. At the time of examination one lot was found to be in whole or in part decomposed, and the other lot was infested with parasitic worms.

On April 4 and on June 17, 1939, the United States attorneys for the Eastern District of Missouri and the Northern District of Illinois, acting upon reports by the Secretary of Agriculture, filed in their respective district courts libels praying seizure and condemnation of 200 boxes of ocean perch at St. Louis, Mo., and 75 boxes of haddock at Chicago, Ill.; alleging that the articles had been shipped on or about March 18 and May 27, 1939, respectively, by the Great Atlantic & Pacific Tea Co. from Boston, Mass.; and charging adulteration in violation of the Food and Drugs Act.

The ocean perch was alleged to be adulterated in that it consisted wholly or in part of a filthy animal substance; and the haddock was alleged to be adulterated in that it consisted wholly or in part of a decomposed animal substance.

On April 26 and July 31, 1939, no claimant having appeared, judgments of condemnation were entered and the ocean perch was ordered destroyed and the haddock was ordered converted into fertilizer.

M. L. Wilson, *Acting Secretary of Agriculture.*

30842. Adulteration of frozen fish. U. S. v. 98 Boxes of Pollack Fillets. Default decree of condemnation. Product disposed of for fertilizer. (F. & D. No. 45398. Sample No. 55217–D.)

This product had been shipped in interstate commerce and remained unsold in the original packages. At the time of examination it was found to be in whole or in part decomposed.

On May 24, 1939, the United States attorney for the Northern District of Illinois, acting upon a report by the Secretary of Agriculture, filed in the district court a libel praying seizure and condemnation of 98 boxes of pollack fillets at Chicago, Ill.; alleging that the article had been shipped in interstate commerce on or about May 11, 1939, from Gloucester, Mass., by Davis Bros. Fisheries Co., in pool-car shipment for New England Fillet Co., Inc., of Boston, Mass.; and charging adulteration in violation of the Food and Drugs Act. The article was labeled in part: "Sea Crest Brand Fancy Chilled Fillets."

It was alleged to be adulterated in that it consisted wholly or in part of a decomposed animal substance.

On July 31, 1939, no claimant having appeared, judgment of condemnation was entered and the product was ordered disposed of for fertilizer.

M. L. Wilson, *Acting Secretary of Agriculture.*

30843. Adulteration of frozen fish. U. S. v. Seven Cases of Whiting (and three other seizure actions against the same product). Default decrees of condemnation and destruction. (F. & D. Nos. 45174, 45176, 45177, 45178. Sample No. 30720–D.)

This product had been shipped in interstate commerce and remained unsold and in the original packages. At the time of examination it was found to be in whole or in part decomposed.

On April 11, 1939, the United States attorney for the Northern District of Texas, acting upon a report by the Secretary of Agriculture, filed in the district court libels praying seizure and condemnation of 11½ cases of Stk whiting as follows: 7 cases at Lubbock, 2 cases at Wellington, 1 case at Childress, and 1½ cases at Shamrock, Tex.; alleging that the article had been shipped on or

about April 3, 1939, by Mid-Central Fish Co. from Oklahoma City, Okla.; and charging adulteration in violation of the Food and Drugs Act.

The article was alleged to be adulterated in that it consisted wholly or in part of a decomposed animal substance.

On May 19 and August 14, 1939, no claimant having appeared, judgments of condemnation were entered and the product was ordered destroyed.

M. L. WILSON, *Acting Secretary of Agriculture.*

30844. Adulteration of frozen fish. U. S. v. 73 Cartons of Ocean Perch Fillets. Default decree of condemnation and destruction. (F. & D. No. 45347. Sample No. 55339–D.)

This product had been shipped in interstate commerce and remained unsold and in the original packages. At the time of examination it was found to be wholly or in part decomposed.

On May 22, 1939, the United States attorney for the Northern District of Illinois, acting upon a report by the Secretary of Agriculture, filed in the district court a libel praying seizure and condemnation of 73 cartons of ocean perch fillets at Chicago, Ill.; alleging that the article had been shipped on or about May 2, 1939, by the Honor Brand Frosted Foods Corporation from Gloucester, Mass.; and charging adulteration in violation of the Food and Drugs Act. The article was labeled in part: "Gorton's Ocean Perch Fillets."

Adulteration was alleged in that the article was composed wholly or in part of a decomposed animal substance.

On July 31, 1939, no claimant having appeared, judgment of condemnation was entered and it was ordered that the product be converted into fertilizer.

M. L. WILSON, *Acting Secretary of Agriculture.*

30845. Adulteration of frozen fish. U. S. v. 1,565 Boxes of Skinless Haddock Tenderloins. Decree of condemnation. Product released under bond for segregation and destruction of unfit portion. (F. & D. No. 45442. Sample Nos. 30772–D, 41295–D, 69142–D.)

This product had been shipped in interstate commerce and remained unsold and in the original packages. At the time of examination it was found to be in part decomposed.

On June 3, 1939, the United States attorney for the District of Colorado, acting upon a report by the Secretary of Agriculture, filed in the district court a libel praying seizure and condemnation of 1,565 boxes of haddock fillets at Denver, Colo., consigned by O'Donnell-Usen Fisheries Corporation; alleging that the article had been shipped on or about May 8, 1939, from Boston, Mass.; and charging adulteration in violation of the Food and Drugs Act. The article was labeled in part: "Skinless Haddock Taste O'Sea Tenderloins."

It was alleged to be adulterated in that it consisted wholly or in part of a decomposed animal substance.

On July 10, 1939, O'Donnell-Usen Fisheries, Inc., claimant, having admitted the allegations of the libel, judgment of condemnation was entered and it was ordered that the product be released under bond conditioned that the unfit portion be segregated and destroyed.

M. L. WILSON, *Acting Secretary of Agriculture.*

30846. Adulteration of frozen fish. U. S. v. 300 Cartons of Red Perch Fillets. Default decree of condemnation. Product ordered disposed of for fertilizer. (F. & D. No. 44995. Sample No. 54630–D.)

This product was infested with parasitic worms.

On March 10, 1939, the United States attorney for the Northern District of Illinois, acting upon a report by the Secretary of Agriculture, filed in the district court a libel praying seizure and condemnation of 300 cartons of red perch fillets at Chicago, Ill.; alleging that the article had been shipped in interstate commerce on or about February 24, 1939, by the Frosted Foods Sales Corporation from Boston, Mass.; and charging adulteration in violation of the Food and Drugs Act. The article was labeled in part: "Birds Eye Frosted Foods Fillets."

It was alleged to be adulterated in that it consisted in whole or in part of a filthy animal substance.

On April 21, 1939, no claimant having appeared, judgment of condemnation was entered and the product was ordered converted into fertilizer.

M. L. WILSON, *Acting Secretary of Agriculture.*

30847. Adulteration of frozen fish. U. S. v. 590 Boxes of Ocean Perch Fillets (and 3 other seizure actions against similar products). Two lots condemned and released under bond for segregation and destruction of unfit portions. Remaining lots ordered destroyed. (F. & D. Nos. 45089, 45259, 45260, 45493, 45494, 45495. Sample Nos. 55332–D, 55333–D, 55350–D, 55351–D, 55352–D, 58867–D.)

These products had been shipped in interstate commerce and remained unsold and in the original unbroken packages. At the time of examination, certain lots were found to be in part decomposed and others were infested with parasitic worms.

Between March 24 and June 15, 1939, the United States attorneys for the Middle District of Tennessee and the Western District of Michigan, acting upon reports by the Secretary of Agriculture, filed in their respective district courts libels praying seizure and condemnation of 590 boxes of frozen fish at Nashville, Tenn., and 802 boxes of frozen fish at Kalamazoo, Mich.; alleging that the articles had been shipped by the Commonwealth Ice & Cold Storage Co. from Boston, Mass., within the period from on or about February 24, 1939, to on or about May 20, 1939; and charging adulteration in violation of the Food and Drugs Act. The articles were labeled in part variously: "Ocean Perch Layers"; "Taste of Sea Tenderloins O'Donnell-Usen Fisheries Corp"; "Red Fish Fillets"; "O'Donnell-Usen Fisheries Small Haddock."

Adulteration was alleged with respect to two of the lots seized at Kalamazoo, in that they consisted wholly or in part of decomposed and putrid animal substances. Adulteration was alleged with respect to the remaining lots in that they consisted wholly or in part of filthy animal substances.

On May 13, 1939, no claim having been entered for the lot seized at Nashville, Tenn., judgment of condemnation was entered and the said lot was ordered destroyed. On May 19, 1939, the consignee of 2 lots involving 202 boxes seized at Kalamazoo, Mich., having petitioned the destruction of the said lots, judgments of condemnation and destruction were entered accordingly.

On July 6, 1939, the O'Donnell-Usen Fisheries, Inc., Boston, Mass., having filed a claim for 2 of the remaining 3 lots at Kalamazoo, Mich., and having admitted the allegations of the libel with respect to said lots, judgment was entered condemning them and ordering that they be released under bond conditioned that the fish be sorted and the unfit portion destroyed. On July 15, 1939, no claim having been entered for the remaining lot at Kalamazoo, Mich., it was condemned and ordered destroyed.

M. L. Wilson, *Acting Secretary of Agriculture.*

30848. Adulteration of frozen fillet of cod. U. S. v. 160 Pounds of Frozen Fillet of Cod. Default decree of condemnation and destruction. (F. & D. No. 45206. Sample No. 19900–D.)

This product had been shipped in interstate commerce and remained unsold and in the original packages. At the time of examination it was found to be in whole or in part decomposed.

On April 20, 1939, the United States attorney for the Northern District of Iowa, acting upon a report by the Secretary of Agriculture, filed in the district court a libel praying seizure and condemnation of 160 pounds of frozen fillet of cod at Sioux City, Iowa; alleging that the article had been shipped on or about March 26, 1939, by O'Donnell-Usen Fisheries Corporation from Boston, Mass.; and charging adulteration in violation of the Food and Drugs Act. The article was labeled in part: "Taste O'Sea Tenderloins."

It was alleged to be adulterated in that it consisted wholly or in part of a decomposed and putrid animal substance.

On May 26, 1939, no claimant having appeared, judgment of condemnation was entered and the product was ordered destroyed.

M. L. Wilson, *Acting Secretary of Agriculture.*

30849. Adulteration of frozen fish. U. S. v. 54 Boxes of Red Perch Fillets (and 13 other seizure actions against similar products). Default decrees of condemnation. Product ordered destroyed or converted into fertilizer. (F. & D. Nos. 44936, 44949, 44961, 45012, 45022, 45098, 45143, 45144, 45201, 45264, 45265, 45272, 45292, 45306, 45307, 45352. Sample Nos. 30735–D, 30811–D, 30814–D, 41215–D, 41216–D, 42677–D, 43518–D, 54407–D, 54625–D, 62660–D, 62695–D, 62697–D, 62698–D, 62804–D, 62805–D, 65510–D.)

These products had been shipped in interstate commerce and remained unsold and in the original packages. At the time of examination certain lots were

found to be infested with parasitic worms, and the remaining lots were found to be in whole or in part decomposed.

Within the period from March 6 to June 27, 1939, the United States attorneys for the Northern and Southern Districts of Indiana, Western District of New York, Northern District of Illinois, Northern and Western Districts of Texas, District of Colorado, and the Northern District of California, acting upon reports by the Secretary of Agriculture, filed in their respective district courts libels praying seizure and condemnation of 4,884 boxes of frozen fish in various lots at Fort Wayne and Indianapolis, Ind., Buffalo, N. Y., Chicago, Ill., Fort Worth, Dallas, Lubbock, Amarillo, and San Antonio, Tex., Denver, Colo., and San Francisco, Calif.; alleging that the articles had been shipped within the period from on or about May 28, 1938, to on or about April 22, 1939, by Booth Fisheries Corporation from Boston, Mass.; and charging adulteration in violation of the Food and Drugs Act. The articles were labeled in part variously: "Red Perch Fillets"; "H and G Whiting"; "Tasty Loins * * * Booth"; "Quints Boneless Tastyloins"; "Cellophane Wrapped Tastyloins * * * Skinless Had."; "Cape Ann Ocean Perch"; "Tastyloins * * * Reg. Had Fillets"; "Booth Cod Tastyloins"; "Ocean Perch Fillets"; "Skinless Pollock Fillets"; "Tastyloins Booth Red Perch"; "Twin Tastyloins Diamond Booth Famous Seafoods."

The articles were alleged to be adulterated in that one portion consisted wholly or in part of a filthy animal substance, a second portion consisted of a decomposed animal substance, and the remainder consisted in whole or in part of a decomposed and putrid animal substance.

Between April 4 and August 14, 1939, no claim having been entered, judgments of condemnation were entered and the products were ordered destroyed with the exception of one lot seized at Chicago, Ill., which was ordered converted into fertilizer.

M. L. Wilson, *Acting Secretary of Agriculture.*

30850. Adulteration of frozen fish. U. S. v. 538 Boxes of Frozen Fish. Consent decree of destruction. (F. & D. No. 45168. Sample No. 58968–D.)

This product had been shipped in interstate commerce and remained unsold and in the original packages. At the time of examination it was found to be in part decomposed.

On April 10, 1939, the United States attorney for the Middle District of Tennessee, acting upon a report by the Secretary of Agriculture, filed in the district court a libel praying seizure and condemnation of 538 boxes of frozen fish at Nashville, Tenn.; alleging that the article had been shipped on or about March 21, 1939, by the Atlantic Coast Fisheries Corporation from Boston, Mass.; and charging adulteration in violation of the Food and Drugs Act. The article was labeled in part: "H. & G. Whiting."

It was alleged to be adulterated in that it was in part decomposed.

On April 24, 1939, the consignee (owner) of the product having filed an answer praying that it be destroyed, a decree was entered authorizing such destruction in the presence of the United States marshal.

M. L. Wilson, *Acting Secretary of Agriculture.*

30851. Adulteration of frozen fish. U. S. v. 400 Boxes of Frozen Fish. Consent decree of condemnation. Product ordered converted into fertilizer. (F. & D. Nos. 45110, 45111. Sample Nos. 54655–D, 54663–D.)

This product had been shipped in interstate commerce and remained unsold and in the original packages. At the time of examination it was found to be in part decomposed.

On March 31, 1939, the United States attorney for the Northern District of Illinois, acting upon a report by the Secretary of Agriculture, filed in the district court a libel praying seizure and condemnation of 400 boxes of frozen fish at Chicago, Ill.; alleging that the article had been shipped on or about March 16, 1939, by the Atlantic Fish & Oyster Co. from Boston, Mass.; and charging adulteration in violation of the Food and Drugs Act. The article was labeled in part: "H. & G. Whiting Fillets."

The article was alleged to be adulterated in that it consisted wholly or in part of a decomposed animal substance.

On April 21, 1939, the consignee having consented to the entry of a decree, judgment of condemnation was entered and it was ordered that the product be disposed of for fertilizer.

M. L. Wilson, *Acting Secretary of Agriculture.*

30852. Adulteration of frozen fish. U. S. v. 94 Boxes and 94 Boxes of Ocean Perch. Default decrees of condemnation and destruction. (F. & D. Nos. 45223, 45454. Sample Nos. 58798–D, 65252–D.)

This product contained parasitic worms.

On April 24 and June 6, 1939, the United States attorneys for the Southern District of Indiana and the Southern District of Ohio, acting upon reports by the Secretary of Agriculture, filed in their respective district courts libels praying seizure and condemnation of 94 boxes of ocean perch fillets at Indianapolis, Ind., and 94 boxes of ocean perch fillets at Dayton, Ohio; alleging that the article had been shipped in interstate commerce on or about April 4 and May 19, 1939, by O'Donnell-Usen Fisheries Corporation from Boston, Mass.; and charging adulteration in violation of the Food and Drugs Act.

The article was alleged to be adulterated in that it consisted wholly or in part of a filthy animal substance.

On June 29 and July 13, 1939, no claimant having appeared, judgments of condemnation were entered and the product was ordered destroyed.

M. L. Wilson, *Acting Secretary of Agriculture.*

30853. Adulteration of frozen fish. U. S. v. 1,382 Boxes of Skinless Cod Fillets, et al. Portions of product condemned and ordered destroyed. Remainder condemned and ordered released under bond for segregation and destruction of unfit portions. (F. & D. Nos. 44907, 44908, 44910, 44911. Sample Nos. 58845–D, 58846–D, 58848–D, 58849–D.)

These products had been shipped in interstate commerce and remained unsold and in the original packages. At the time of examination two of the four lots were found to be in part decomposed, and the remaining lots were found to be infested with parasitic worms.

On February 27, 1939, the United States attorney for the Eastern District of Tennessee, acting upon a report by the Secretary of Agriculture, filed in the district court a libel praying seizure and condemnation of 4 lots, aggregating 2,610 boxes of frozen fish, at Knoxville, Tenn.; alleging that the articles had been shipped by the Commonwealth Ice & Cold Storage Co. from Boston, Mass., within the period from on or about June 18, 1938, to on or about January 27, 1939; and charging adulteration in violation of the Food and Drugs Act. Certain lots were labeled in part: "Skinless Cod Fillets [or "Small Haddock"] O'Donnell-Usen Fisheries." The remaining lots were labeled in part: "Wachusett Brand Fancy Fillets Skinless [or "Sea Perch"]."

Adulteration was alleged with respect to two lots in that they were in whole or in part decomposed, filthy, and putrid. The remaining lots were alleged to be adulterated in that they consisted wholly or in part of filthy animal substances containing parasites.

On April 1, 1939, the P. H. Prior Co., Boston, Mass., having proved ownership of the 248 boxes of the Wachusett brand and having consented to the entry of a decree of destruction of that brand, judgment of condemnation was entered and the product was ordered destroyed. On April 22, 1939, the Lay Packing Co., Knoxville, Tenn., claimant for the two remaining lots, having admitted the allegations of the libel, judgment of condemnation was entered and it was ordered that the product be released under bond conditioned that the unfit portion be segregated and destroyed.

M. L. Wilson, *Acting Secretary of Agriculture.*

30854. Adulteration of frozen fish. U. S. v. 290 Boxes of Frozen Fillets (and 2 other seizure actions against similar products). Default decrees of condemnation and destruction. (F. & D. Nos. 45027, 45167, 45354. Sample Nos. 53376–D, 63442–D, 65523–D, 65586–D.)

These products had been shipped in interstate commerce and remained unsold and in the original packages. At the time of examination, two of the lots were found to be infested with parasitic worms, and the remaining lot was found to be in whole or in part decomposed.

Between March 16 and May 18, 1939, the United States attorneys for the Southern District of Indiana, Northern District of Ohio, and Southern District of Illinois, acting upon reports by the Secretary of Agriculture, filed in their respective district courts libels praying seizure and condemnation of 290 boxes of frozen fish at Indianapolis, Ind., 272 boxes of frozen fish at Akron, Ohio, and 16 cartons of frozen fish at Springfield, Ill.; alleging that the articles had been shipped within the period from on or about August 31, 1938, to on or about April 22, 1939, from Boston, Mass., in part by the 40 Fathom Fisheries Co., and in part by General Seafoods Corporation; and charging adulteration

in violation of the Food and Drugs Act. The articles were labeled in part, variously: "Ocean Perch Cello"; "Cape Ann Ocean Perch"; or "Whiting Fillets, Skins On."

The perch was alleged to be adulterated in that it consisted wholly or in part of a filthy animal substance. The whiting fillets were alleged to be adulterated in that they consisted in whole or in part of a decomposed animal substance.

Between May 17 and September 25, 1939, no claimant having appeared, judgments of condemnation were entered and the products were ordered destroyed.

M. L. WILSON, *Acting Secretary of Agriculture.*

30855. Misbranding of cottonseed cake. U. S. v. Terminal Oil Mill Co. Plea of guilty. Fine, $25 and costs. (F. & D. No. 42733. Sample No. 5961–D.)

This product contained a smaller proportion of protein than that declared on the label.

On July 24, 1939, the United States attorney for the Western District of Oklahoma, acting upon a report by the Secretary of Agriculture, filed in the district court an information against the Terminal Oil Mill Co., a corporation, Oklahoma City, Okla., alleging shipment by said company in violation of the Food and Drugs Act on or about January 6, 1939, from the State of Oklahoma into the State of Kansas of a quantity of cottonseed cake that was misbranded. The article was labeled in part: "Big Chief Prime Cotton Seed Cake."

It was alleged to be misbranded in that the statement on the label, "Protein not less than 43.00%," was false and misleading and was borne on the label so as to deceive and mislead the purchaser since the article contained less than 43 percent of protein, namely, not more than 40.50 percent.

On July 28, 1939, a plea of guilty having been entered on behalf of the defendant, the court imposed a fine of $25 and costs.

M. L. WILSON, *Acting Secretary of Agriculture.*

30856. Adulteration and misbranding of olive oil. U. S. v. 11 Gallon Cans of Alleged Olive Oil. Default decree of condemnation and destruction. (F. & D. No. 40840. Sample No. 54924–C.)

This product consisted principally or entirely of cottonseed oil.

On November 16, 1937, the United States attorney for the District of Massachusetts, acting upon a report by the Secretary of Agriculture, filed in the district court a libel praying seizure and condemnation of 11 gallon cans of alleged olive oil at Worcester, Mass.; alleging that the article had been shipped in interstate commerce on or about November 9, 1937, via truck of Michele Montecalvo, from Providence, R. I.; and charging adulteration and misbranding in violation of the Food and Drugs Act. The article was labeled in part: "Sublime Olive Oil Imported by Acomo Fo Lucca."

It was alleged to be adulterated in that cottonseed oil had been substituted wholly or in part for olive oil, which it purported to be.

It was alleged to be misbranded in that the statements on the label, "Pure Imported Olive Oil Italian Produce * * * Olive Oil Imported * * * Lucca," were false and misleading and tended to deceive the purchaser when applied to an article that was cottonseed oil and that purported to be a foreign product. It was alleged to be misbranded further in that it was offered for sale under the distinctive name of another article, namely, olive oil.

On September 18, 1939, no claimant having appeared, judgment of condemnation was entered and the product was ordered destroyed.

M. L. WILSON, *Acting Secretary of Agriculture.*

30857. Adulteration of butter. U. S. v. Seven Tubs of Butter. Consent decree of condemnation. Product released under bond to be reworked. (F. & D. No. 45543. Sample No. 55603–D.)

This product contained less than 80 percent of milk fat.

On June 8, 1939, the United States attorney for the Northern District of Illinois, acting upon a report by the Secretary of Agriculture, filed in the district court a libel praying seizure and condemnation of seven tubs of butter at Chicago, Ill.; alleging that the article had been shipped in interstate commerce on or about May 22, 1939, by Mooreland Community Creamery from Mooreland, Okla.; and charging adulteration in violation of the Food and Drugs Act.

The article was alleged to be adulterated in that a product which contained less than 80 percent by weight of milk fat had been substituted for butter, a

product which should contain not less than 80 percent of milk fat as provided by act of March 4, 1923.

On July 26, 1939, the Peter Fox Sons Co., Chicago, Ill., claimant, having admitted the allegations of the libel, judgment of condemnation was entered, and the product was ordered released under bond conditioned that it be reworked to the legal standard.

M. L. WILSON, *Acting Secretary of Agriculture.*

30858. Adulteration of crab meat. U. S. v. 40 Cans of Crab Meat. Consent decree of condemnation and destruction. (F. & D. No. 45545. Sample No. 62942–D.)

This product contained evidence of the presence of filth.

On June 8, 1939, the United States attorney for the Northern District of Illinois, acting upon a report by the Secretary of Agriculture, filed in the district court a libel praying seizure and condemnation of 40 cans of crab meat at Chicago, Ill.; alleging that the article had been shipped in interstate commerce on or about May 30, 1939, by Riverside Packing Co., Inc., from Berwick, La.; and charging adulteration in violation of the Food and Drugs Act. The article was labeled in part: (Can label) "Riverside Special Riverside Brand Crabmeat."

It was alleged to be adulterated in that it consisted wholly or in part of a filthy animal substance.

On June 16, 1939, the consignee having consented, judgment of condemnation was entered and the product was ordered destroyed.

M. L. WILSON, *Acting Secretary of Agriculture.*

30859. Adulteration of crab meat. U. S. v. 3 Barrels and 185 Pounds of Crab Meat. Default decree of condemnation and destruction. (F. & D. No. 45540. Sample No. 23796–D.)

This product contained evidence of the presence of filth.

On June 23, 1939, the United States attorney for the District of Maryland, acting upon a report by the Secretary of Agriculture, filed in the district court a libel praying seizure and condemnation of 3 barrels and 185 pounds of crab meat at Baltimore, Md.; alleging that the article had been shipped in interstate commerce on or about June 20, 1939, by John Illich from Ocean Springs, Miss.; and charging adulteration in violation of the Food and Drugs Act. The article was labeled in part: (Tag on barrel) "From John's Fish Market * * * Biloxi, Miss."

It was alleged to be adulterated in that it consisted in whole or in part of a filthy animal substance.

On July 14, 1939, no claimant having appeared, judgment of condemnation was entered and the product was ordered destroyed.

M. L. WILSON, *Acting Secretary of Agriculture.*

30860. Adulteration of dried peaches and dried prunes. U. S. v. 100 Boxes of Peaches and 53 Boxes of Prunes. Default decrees of condemnation and destruction. (F. & D. Nos. 45261, 45262. Sample Nos. 30726–D, 40966–D.)

These products had been shipped in interstate commerce and remained unsold and in the original packages. At the time of examination they were found to be insect-infested.

On May 5, 1939, the United States attorney for the Northern District of Texas, acting upon reports by the Secretary of Agriculture, filed in the district court libels praying seizure and condemnation of 100 boxes of dried peaches and 53 boxes of dried prunes at Big Spring, Tex.; alleging that the articles had been shipped on or about October 9, 1937, by California Prune & Apricot Growers Association from Hanford, Calif; and charging adulteration in violation of the Food and Drugs Act. The articles were labeled in part: "California Fruits Golden Glow Brand Peaches [or "Prunes"] Packed by California Prune & Apricot Growers Assn. San Jose, California."

They were alleged to be adulterated in that they consisted wholly or in part of filthy vegetable substances.

On August 16, 1939, no claimant having appeared, judgments of condemnation were entered and the products were ordered destroyed.

M. L. WILSON, *Acting Secretary of Agriculture.*

30861. Misbranding of canned cherries. U. S. v. 22 Cases of Red Sour Pitted Cherries. Default decree of condemnation and destruction. (F. & D. No. 44724. Sample No. 43601–D.)

This product was substandard because of the presence of excessive pits, and it was not labeled to indicate that it was substandard.

On January 25, 1939, the United States attorney for the Northern District of California, acting upon a report by the Secretary of Agriculture, filed in the district court a libel praying seizure and condemnation of 22 cases of canned cherries at San Francisco, Calif.; alleging that the article had been shipped in interstate commerce on or about July 23, 1938, by Stayton Canning Co. from Stayton, Oreg.; and charging misbranding in violation of the Food and Drugs Act. The article was labeled in part: "Mountain Home Brand Water Pack Pastry Pack Red Sour Pitted Cherries Haas Brothers Distributors San Francisco, Oakland, Fresno, Calif."

It was alleged to be misbranded in that it was canned food and fell below the standard of quality and condition promulgated by the Secretary of Agriculture since the fruit was not pitted and it contained more than 1 cherry pit per each 20 ounces of net contents, and its package or label did not bear a plain and conspicuous statement prescribed by regulation of this Department indicating that it fell below such standard.

On August 21, 1939, no claimant having appeared, judgment of condemnation was entered and the product was ordered destroyed.

M. L. WILSON, *Acting Secretary of Agriculture.*

30862. Adulteration of strawberry preserves. U. S. v. 39 Cans and 101 Jars of Strawberry Preserves. Default decree of condemnation and destruction. (F. & D. Nos. 44987, 44988. Sample Nos. 39461–D, 39462–D.)

Examination of this product showed the presence of moldy fruit.

On March 10, 1939, the United States attorney for the Western District of Washington, acting upon a report by the Secretary of Agriculture, filed in the district court a libel, and subsequently an amended libel, praying seizure and condemnation of 39 cans and 101 jars of strawberry preserves at Longview, Wash.; alleging that the article had been shipped in interstate commerce on or about August 1, 1938, by Kerr Conserving Co. from Portland, Oreg.; and charging adulteration in violation of the Food and Drugs Act. The article was labeled in part: "Kerr's Pure Preserves Strawberry."

It was alleged to be adulterated in that it consisted in whole or in part of a decomposed vegetable substance.

On August 19, 1939, no claimant having appeared, judgment of condemnation was entered and the product was ordered destroyed.

M. L. WILSON, *Acting Secretary of Agriculture.*

30863. Adulteration of whole frozen eggs. U. S. v. S. Blick Co., Inc. Plea of guilty. Fine, $25. (F. & D. No. 42731. Sample No. 12129–D.)

This product was found to be in part decomposed.

On July 18, 1939, the United States attorney for the Southern District of New York, acting upon a report by the Secretary of Agriculture, filed in the district court an information against the S. Blick Co., Inc., New York, N. Y., alleging shipment by said company in violation of the Food and Drugs Act on or about August 8, 1938, from the State of New York into the State of New Jersey of a quantity of frozen eggs that were adulterated.

Adulteration was alleged in that the article consisted in whole or in part of a decomposed animal substance.

On July 25, 1939, a plea of guilty having been entered on behalf of the defendant, the court imposed a fine of $25.

M. L. WILSON, *Acting Secretary of Agriculture.*

30864. Adulteration and misbranding of vanilla extract. U. S. v. Abraham Kupfershmid (De Calais Laboratorie). Plea of guilty. Fine, $100. (F. & D. No. 42674. Sample Nos. 3841–D, 3842–D, 5625–D, 5710–D, 17444–D.)

This product, which was represented to be pure vanilla extract, was found to consist of an artificially colored imitation vanilla extract containing added vanillin but little or no true vanilla.

On June 29, 1939, the United States attorney for the Southern District of New York, acting upon a report by the Secretary of Agriculture, filed in the district court an information against Abraham Kupfershmid, trading as the De Calais Laboratorie, New York, N. Y., alleging shipment by said defendant

within the period from on or about April 5 to on or about May 7, 1938, from the State of New York into the State of Texas, of quantities of vanilla extract which was adulterated and misbranded and further alleging the sale by said defendant on or about December 21, 1937, under a guaranty that the article was not adulterated or misbranded within the meaning of the Food and Drugs Act, of a quantity of vanilla extract which was adulterated and misbranded and was shipped in interstate commerce on or about December 27, 1937, from the State of New York into the State of West Virginia by the purchaser thereof. Portions of the article were labeled: "Perfection Brand Pure Vanilla Extract 8 Oz. Net R. C. Williams & Co., Inc., Distributors, New York, N. Y." One lot was labeled: "Pure Vanilla No. 1 Grade R. C. Williams & Co., Inc., Distributor New York, N. Y."

Adulteration was alleged in that an artificially colored imitation vanilla extract containing added vanillin and little or no true vanilla had been substituted for pure vanilla extract, which it purported to be. Adulteration was alleged further in that the article was inferior to pure vanilla extract and had been mixed and colored in a manner whereby its inferiority was concealed.

Misbranding was alleged in that the statements "Pure Vanilla Extract" and "Pure Vanilla," borne on the labels, were false and misleading and were borne on the said labels so as to deceive and mislead the purchaser since the article did not consist of pure vanilla extract but did consist of an artificially colored imitation vanilla extract containing added vanillin and little or no true vanilla. It was alleged to be misbranded further in that it was an imitation of pure vanilla extract and was offered for sale under the distinctive name of an another article, namely, pure vanilla extract.

On July 10, 1939, the defendant entered a plea of guilty and the court imposed a fine of $100.

M. L. WILSON, *Acting Secretary of Agriculture.*

30865. Adulteration of brewers' rice. U. S. v. 175 Bags of Brewers' Rice. Product ordered released under bond for reconditioning. (F. & D. No. 45044. Sample No. 59009–D.)

This product had been shipped in interstate commerce and remained unsold and in the original packages. At the time of examination it was found to be in part insect-infested.

On March 20, 1939, the United States attorney for the Southern District of Indiana, acting upon a report by the Secretary of Agriculture, filed in the district court a libel praying seizure and condemnation of 175 bags of brewers' rice at Evansville, Ind; alleging that the article had been shipped on or about February 16, 1939, by the Kaplan Rice Mill, Inc., from Kaplan, La.; and charging adulteration in violation of the Food and Drugs Act.

The article was alleged to be adulterated in that it consisted wholly or in part of a filthy vegetable substance.

On June 7, 1939, Meyer Supply Co., having appeared as claimant and having admitted the allegations of the libel, judgment was entered ordering that the product be released under bond for reconditioning under the supervision of this Department. The product was reconditioned by segregation and destruction of the unfit portion.

M. L. WILSON, *Acting Secretary of Agriculture.*

30866. Adulteration of dried peaches. U. S. v. Sanfilippo Bros., Inc. Plea of guilty. Fine, $50. (F. & D. No. 42740. Sample No. 36793–D.)

Samples of this product were found to be dirty and moldy, and to contain insect excreta and dead worms.

On July 26, 1939, the United States attorney for the Northern District of California, acting upon a report by the Secretary of Agriculture, filed in the district court an information against Sanfilippo Bros. Inc., San Jose, Calif., alleging that on or about February 9, 1939, the defendant delivered to the transportation company, for shipment from San Jose, Calif., to the Territory of Hawaii, a quantity of dried peaches which were adulterated in violation of the Food and Drugs Act. The article was labeled in part: "Suni-Bel Brand Choice Peaches."

Adulteration was alleged in that the article consisted in whole or in part of a filthy animal or vegetable substance.

On August 4, 1939, a plea of guilty having been entered on behalf of the defendant, the court imposed a fine of $50.

M. L. WILSON, *Acting Secretary of Agriculture.*

30867. Adulteration of tullibees. U. S. v. Six Boxes of Tullibees. Consent decree of condemnation and destruction. (F. & D. No. 45286. Sample No. 54389–D.)

This product was infested with parasitic worms.

On April 11, 1939, the United States attorney for the Northern District of Illinois, acting upon a report by the Secretary of Agriculture, filed in the district court a libel praying seizure and condemnation of six boxes of tullibees at Chicago, Ill.; alleging that the article had been shipped in interstate commerce on or about April 1, 1939, by Chas. P. Tobin, Baudette, Minn.; and charging adulteration in violation of the Food and Drugs Act.

Adulteration was alleged in that the article consisted wholly or in part of a filthy, decomposed, or putrid animal substance; and that it consisted of portions of animals unfit for food.

On April 26, 1939, the consignee having consented to the entry of a decree, judgment of condemnation was entered and the product was ordered converted into fertilizer.

M. L. WILSON, *Acting Secretary of Agriculture.*

30868. Adulteration of tomato paste. U. S. v. 681 Cases of Tomato Paste. Consent decree of condemnation. Product released under bond conditioned that unfit portion be destroyed. (F. & D. No. 45158. Sample Nos. 20366–D, 42116–D.)

Samples of this product were found to contain worm and insect fragments.

On April 6, 1939, the United States attorney for the Middle District of Pennsylvania, acting upon a report by the Secretary of Agriculture, filed in the district court a libel praying seizure and condemnation of 681 cases of tomato paste, in part at Dunmore, Pa., and in part at Scranton, Pa.; alleging that the article had been shipped in interstate commerce on or about January 11, 1939, by the Uddo Taormina Corporation from Los Angeles, Calif.; and charging adulteration in violation of the Food and Drugs Act. The article was labeled in part: "Doma Brand Tomato Paste * * * Packed in California for Doma Importing Co., Dunmore, Pa."

It was alleged to be adulterated in that it consisted wholly or in part of a filthy vegetable substance.

On September 15, 1939, the Uddo Taormina Corporation, claimant, having admitted the allegations of the libel and having consented to the entry of a decree, judgment of condemnation was entered, and it was ordered that certain codes be destroyed and that the remainder be released under bond conditioned that any part thereof found to comply with the law be released unconditionally and that the unfit portion be destroyed.

M. L. WILSON, *Acting Secretary of Agriculture.*

30869. Adulteration and misbranding of wheat gray shorts and screenings. U. S. v. Shawnee Milling Co. Plea of guilty. Fine, $25 and costs. (F. & D. No. 42744. Sample No. 3918–D.)

Brown shorts and screenings had been substituted wholly or in part for wheat gray shorts and screenings in this product. It also contained crude fiber in excess of the amount declared on the label.

On August 30, 1939, the United States attorney for the Western District of Oklahoma, acting upon a report by the Secretary of Agriculture, filed in the district court an information against the Shawnee Milling Co., a corporation of Shawnee, Okla., alleging shipment by said company in violation of the Food and Drugs Act on or about November 8, 1938, from the State of Oklahoma into the State of Texas of a quantity of wheat gray shorts and screenings that were adulterated and misbranded.

The article was alleged to be adulterated in that wheat brown shorts and screenings had been substituted in whole or in part for wheat gray shorts and screenings, which it purported to be.

It was alleged to be misbranded in that the statements, "Wheat Gray Shorts and Screenings" and "Crude Fiber not more than 6 percent," borne on the tag attached to the sacks containing it, were false and misleading and were borne on the said tags so as to deceive and mislead the purchaser, since it did not consist of wheat gray shorts and screenings, but did consist in whole or in part of wheat brown shorts and screenings and it contained more than 6 percent, namely, not less than 7.22 percent, of crude fiber.

On September 16, 1939, a plea of guilty having been entered on behalf of the defendant, the court imposed a fine of $25 and costs.

M. L. WILSON, *Acting Secretary of Agriculture.*

30870. Misbranding of cottonseed meal. U. S. v. Southland Cotton Oil Co. Plea of guilty. Fine, $100 and costs. (F. & D. No. 42750. Sample Nos. 5963–D, 5964–D.)

This product contained a smaller proportion of protein than that declared on the tags.

On August 25, 1939, the United States attorney for the Western District of Oklahoma, acting upon a report by the Secretary of Agriculture, filed in the district court an information against the Southland Cotton Oil Co., a corporation trading at Oklahoma City, Okla., alleging shipment by said defendant in violation of the Food and Drugs Act on or about January 18 and February 21, 1939, from the State of Oklahoma into the State of Kansas of quantities of cottonseed meal which was alleged to be misbranded.

The article was alleged to be misbranded in that the statement on the tags, "Crude Protein, not less than 43%," was false and misleading and was borne on the tags so as to deceive and mislead the purchaser since it contained less than 43 percent of crude protein, samples taken from the two shipments having been found to contain not more than 40.69 percent and 40.94 percent, respectively, of crude protein.

On September 12, 1939, the defendant corporation entered a plea of guilty and the court imposed a fine of $100 and costs.

M. L. Wilson, *Acting Secretary of Agriculture.*

30871. Misbranding of canned cherries. U. S. v. 50 Cases of Red Sour Pitted Cherries. Consent decree of condemnation. Product released under bond to be relabeled or repacked. (F. & D. No. 44619. Sample No. 41525–D.)

This product was substandard because of the presence of excessive pits, and it was not labeled to indicate that it was substandard.

On February 6, 1939, the United States attorney for the District of Wyoming, acting upon a report by the Secretary of Agriculture, filed in the district court a libel praying seizure and condemnation of 50 cases of canned cherries at Rock Springs, Wyo.; alleging that on or about October 26, 1938, the Pacific Fruit & Produce Co. shipped the said article from Ogden, Utah, to themselves at Rock Springs, Wyo., and that it was misbranded in violation of the Food and Drugs Act. The said 50 cases of canned cherries were purchased by the Pacific Fruit & Produce Co. from H. D. Olson of Ogden, Utah, and at the time of sale H. D. Olson delivered to the purchaser a guaranty that the product complied with the Federal and all State food laws. The article was labeled in part: (Can) "Nation's Garden Brand Water Pack Red Sour Pitted Cherries * * * Packed For Fine Foods, Inc. Seattle Minneapolis."

It was alleged to be misbranded in that it fell below the standard of quality and condition promulgated by the Secretary of Agriculture for such canned food since there was present more than 1 cherry pit per 20 ounces of net contents, and its label did not bear a plain and conspicuous statement showing that it fell below such standard.

On April 14, 1939, H. D. Olson, claimant, having consented to the entry of a decree, judgment of condemnation was entered, and the product was ordered released under bond conditioned that it be relabeled or repacked so that it would comply with the Federal Food and Drugs Act.

M. L. Wilson, *Acting Secretary of Agriculture.*

30872. Adulteration of canned tuna fish. U. S. v. Van Camp Sea Food Co., Inc. Tried to the court; judgment of guilty. Fine, $800. (F. & D. No. 40772. Sample Nos. 10510–C, 21151–C, 33582–C, 33583–C, 33776–C, 41243–C, 41244–C, 41247–C.)

This product consisted in large part of a highly decomposed animal substance.

On February 28, 1938, the United States attorney for the Southern District of California, acting upon a report by the Secretary of Agriculture filed in the district court an information against the Van Camp Sea Food Co., Inc., San Diego, Calif., alleging shipment by said company in violation of the Food and Drugs Act, within the period from on or about May 10 to on or about May 13, 1937, from the State of California into the States of Indiana, Michigan, Colorado, and Connecticut, of quantities of canned tuna fish which was adulterated. Portions of the article were labeled in part: "Catalina Brand [or "Chicken of the Sea Brand"] * * * Packed By Van Camp Sea Food Company, Inc." The remainder was labeled in part: "Blue & White Brand * * * Red & White Corp'n Distributors."

The article was alleged to be adulterated in that it consisted in whole and in part of a decomposed animal substance.

On June 8, 1939, a jury having been waived and the case having been submitted to the court on stipulation and briefs, the following memorandum of conclusions and minute order were entered:

HOLLZER, *Judge*. "It appearing, from the stipulation of facts, that defendant caused to be shipped in interstate commerce certain canned food intended to be used as an article of food which was clearly adulterated within the meaning of the Food and Drugs Act, in that it consisted in large part of highly decomposed animal substance; and

"It further appearing that the only inspection given to said food prior to shipment thereof in interstate commerce was one similar to the method of inspection which the defendant had been following for a number of years and which method in the year 1935 resulted in the prosecution and in the year 1936 in the conviction of defendant on the charge of shipping in interstate commerce canned tuna in violation of said act; and

"It further appearing that said food prior to the shipment thereof was not subjected to the method of inspection which in the latter part of 1936 said defendant had instructed its employees to make prior to shipping food packed in its plants, and that had said food been subjected to the latter method of inspection discovery would have been made readily that said food was clearly adulterated within the meaning of said act, in that it consisted in large part of highly decomposed animal substance;

"The court concludes that all of the material allegations of the information filed herein have been proved beyond all reasonable doubt, and that the defendant is guilty of each and all of the offenses charged in said information. (See *Union Dairy* v. *U. S.* 250 F. 231; *Philadelphia Pickling Co.* v. *U. S.* 202 F. 150; *Armour & Co.* v. *U. S.* 215 F. 585.)

Minute Order

"For the reasons set forth in the memorandum of conclusions this day filed, it is ordered that the defendant appear before this court on June 16, 1939, at 10 a. m., which time is fixed for the pronouncement of judgment herein."

On June 16, 1939, a fine of $800 was imposed, i. e., $200 on each of the four counts of the information.

M. L. WILSON, *Acting Secretary of Agriculture.*

30873. Adulteration of butter. U. S. v. Tekamah Cooperative Creamery Co. Plea of guilty. Fine, $50 and costs. (F. & D. No. 42752. Sample Nos. 60245–D, 60678–D, 60679–D.)

This product contained less than 80 percent by weight of milk fat.

On September 2, 1939, the United States attorney for the District of Nebraska, acting upon a report by the Secretary of Agriculture, filed in the district court an information against the Tekamah Cooperative Creamery Co., a corporation, Tekamah, Nebr., alleging shipment by said defendant in violation of the Food and Drugs Act on or about April 26 and May 2, 1939, from the State of Nebraska into the State of New York of quantities of butter that was adulterated.

Adulteration was alleged in that a product which contained less than 80 percent by weight of milk fat had been substituted for butter, a product which should contain not less than 80 percent by weight of milk fat, as prescribed by the act of Congress of March 4, 1923.

On September 15, 1939, a plea of guilty was entered on behalf of the defendant and the court imposed a fine of $50 and costs.

M. L. WILSON, *Acting Secretary of Agriculture.*

30874. Adulteration and misbranding of feeds. U. S. v. 110 Sacks of Feeding Oat Meal (and 4 other seizure actions against similar products). Tried to the court; judgment for the Government. Decrees of condemnation and destruction. (F. & D. Nos. 41293, 41294, 41462, 41463, 41774. Sample Nos. 902–C, 903–C, 4921–D to 4924–D, inclusive.)

These products were represented to be feeding oatmeal, pulverized oats, or ground oats, but contained in addition thereto other ingredients such as rice hulls, rice fragments, rice bran, barley, barley hulls, and cassava meal.

On December 30, 1937, and January 18 and February 18, 1938, the United States attorney for the District of Massachusetts, acting upon reports by the

Secretary of Agriculture, filed in the district court libels praying seizure and condemnation of 1,589 sacks of feeds, hereinafter described, in various lots at Southbridge, Fitchburg, Worcester, and Taunton, Mass.; alleging that the articles had been shipped in interstate commerce within the period from on or about August 26, 1937, to on or about December 27, 1937, by P. Fred'k Obrecht & Son from Baltimore, Md.; and charging adulteration and misbranding in violation of the Food and Drugs Act. The articles were labeled in part, variously: "Pulverized Oats * * * Hood Mills Company * * * Baltimore, Md."; "Fine Ground Feeding Oat Meal [or "Ground Oats" or "Pulverized Oats"] Farmers Service Bureau Baltimore, Md."

The pulverized oats (two lots) were alleged to be adulterated in that a mixture of finely ground oats, a ground wheat product, and a starchy material closely resembling cassava starch, in the case of one lot, and a mixture of ground oats and finely ground rice bran, in the case of the other lot, had been substituted in whole or in part for pulverized oats. The feeding oat meal (two lots) was alleged to be adulterated in that a mixture of ground oats, finely ground rice bran, rice hulls, broken rice fragments, and a cereal starch, in the case of one lot, and a mixture of oat products, broken rice, rice hulls, rice bran, and cassava meal, in the case of the other lot, had been substituted in whole or in part for "Fine Ground Feeding Oat Meal." The ground oats were alleged to be adulterated in that a mixture of finely ground oats, ground rice bran, fragments of barley and barley hulls and starchy material closely resembling cassava starch had been substituted in whole or in part for ground oats.

Misbranding was alleged in that the statements on the labels, "Pulverized Oats," "Fine Ground Feeding Oat Meal," and "Ground Oats," were false and misleading and tended to deceive and mislead the purchaser when applied to articles of the composition described in the preceding paragraph. Misbranding was alleged for the further reason that the articles were offered for sale under the distinctive names of other articles.

P. Fred'k Obrecht & Son having entered an appearance as claimant, the cases were consolidated and on May 19, 1939, were tried to the court. Decision was reserved. On June 12, 1939, the following memorandum opinion sustaining the charges in the libels was handed down:

SWEENEY, Judge. "There are involved in this decision five libels for condemnation of grain, marked as either 'pulverized oats,' 'ground oats,' or 'feeding oat meal,' intended for consumption by animals. The claimant in each case is the same person, and the five libels will be treated as one. The cases are similar, except as to the percentage of protein, fat, and fiber found. The libels were brought for violation of section 8 of the Food and Drugs Act, (21 USCA § 8) and for misbranding under section 9 of the same act.

"In four of the five cases, analyses by a State chemist showed that the products sought to be condemned contained less of either fat or protein than the tag on the article guaranteed, or indicated an excess over the guaranteed maximum amount of fiber disclosed on the tag. In the fifth case there was no chemical analysis, and, unless this particular seizure can be condemned because of a violation of section 8, the libel must fail.

"As to the other four, it is clear that the article offered for sale was not properly branded. The tags on the various sacks informed the public of the minimum of protein and fat contained in the mixture, and the maximum of fiber contained therein. While the deficiencies were slight, nevertheless, there was no disagreement that the deficiencies existed. One who places a tag on his product informing the public that it contains a minimum or a maximum of an ingredient is bound to live up to his claim. Any shortage of a minimum ingredient or any excess of a maximum ingredient cannot be excused on the ground that the product approximated the information given to the public, nor is it any excuse that the deficiencies exist without conscious fraud on the part of the owner. See *United States* v. *Johnson*, 221 U. S. 488, 497, and *United States* v. *Thirty-six Bottles of London Dry Gin, et al.*, 210 F. 271. The articles libeled were misbranded within the meaning of section 9 of the Food and Drugs Act, 21 USCA.

"In all of the cases, including the one referred to above in which there was no chemical analysis, a qualitative analysis by the United States Government showed that each of the libeled articles, although purporting to be 'feeding oat meal,' 'pulverized oats,' or 'ground oats,' contained in addition thereto, other ingredients, such as rice hulls, rice fragments, rice bran, barley, barley hulls,

and cassava meal. There was nothing on the tags or on the sacks in which the articles were shipped which informed the public of the presence of this foreign matter. It was not a natural contaminus of the article offered for sale, but was a substituted article within the meaning of section 8 of the act refering to adulterated articles. Adulteration means to corrupt, debase, or make impure by a mixture of a foreign or baser substance. *United States* v. *St. Louis Coffee & Spice Mills*, 189 F. 191. The claimant claims that the presence of such foreign matter was without his knowledge, and that it was permissible under the Grain Standards Act of 1916, 7 USCA. The claimant's contention that he had no knowledge of the presence of the foreign matter is of no avail in this proceeding. This is a libel filed against the offending article, and it is no part of the Government's burden to show substitution by the owner or shipper, or even knowledge of it. It is sufficient if any article, other than that purported to be sold, has been substituted either wholly or in part for the article that the tag represents the article to be. See *United States* v. *Five Boxes of Asafoetida*, 181 F. 561. The contention that the Grain Standards Act of 1916 permits the substitution of rice hulls, rice fragments, cassava meal, barley, barley hulls, or rice bran for others is without merit. It did not purport to repeal, alter, or modify the Food and Drugs Act of 1906. See *United States* v. *154 Sacks of Oats*, 283 F. 985. While I am satisfied that the claimant is a reputable business man, and that he had no knowledge or notice that the foreign substances were contained in the articles, nevertheless, the articles themselves were not only misbranded, but a foreign substance had been substituted in part for the article which it purported to be.

"In each of the five cases an order of forfeiture may be submitted."

On June 19, 1939, judgments of condemnation were entered and the products were ordered destroyed.

M. L. Wilson, *Acting Secretary of Agriculture.*

30875. Adulteration of pickles. U. S. v. George Edward Thies (Thies Pickle Co.). Plea of guilty. Defendant sentenced to 9 months in the House of Correction. Imposition of sentence suspended and defendant placed on probation for 2 years. (F. & D. No. 42685. Sample Nos. 37336–D, 37338–D, 37339–D, 37342–D.)

Samples of this article were found to be filthy in that they contained rodent hairs, fles, insect parts, and shells of pupae.

On April 11, 1939, the United States attorney for the Western District of Wisconsin, acting upon a report by the Secretary of Agriculture, filed in the district court an information against George Edward Thies, trading as Thies Pickle Co., Pepin, Wis., alleging shipment by said defendant in violation of the Food and Drugs Act within the period from on or about September 30 to on or about November 4, 1938, from the State of Wisconsin into the State of Missouri of quantities of pickles that were adulterated.

The article was alleged to be adulterated in that it consisted in whole and in part of a filthy, decomposed, and putrid vegetable substance.

On September 7, 1939, the defendant having entered a plea of guilty, was sentenced to 9 months in the House of Correction. Imposition of sentence was suspended and the defendant was placed on probation for 2 years.

M. L. Wilson, *Acting Secretary of Agriculture.*

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[1] Contains an opinion of the court.

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U. S. GOVERNMENT PRINTING OFFICE: 1940

N. J., F. D. 30876–30900 Issued January 1940

United States Department of Agriculture

FOOD AND DRUG ADMINISTRATION

NOTICES OF JUDGMENT UNDER THE FOOD AND DRUGS ACT

[Given pursuant to section 4 of the Food and Drugs Act]

30876–30900

DRUGS

[Approved by the Acting Secretary of Agriculture, Washington, D. C., November 22, 1939]

30876. Adulteration and misbranding of ether U. S. P. 10 (ethyl oxide U. S. P. XI). U. S. v. 15 Cans of "Ether U. S. P. 10 * * * (Ethyl Oxide U. S. P. XI)," and 9 other seizure actions against the same product. Default decrees of condemnation and destruction. (F. & D. Nos. 45238, 45239, 45266, 45288, 45289, 45325, 45329, 45418, 45420, 45421, 45445. Sample Nos. 5469–D, 45265–D, 52307–D, 52512–D, 53655–D, 55656–D, 57642–D, 59029–D, 62836–D, 62837–D, 69031–D.)

This product had been shipped in interstate commerce and remained unsold and in the original packages. At the time of examination, samples consisting of 10 cans taken from each of 10 shipments, showed the presence in the product of peroxide in 4, 10, 4, 2, 3, 7, 2, 7, 8, and 3 cans, respectively; and a sample, consisting of 5 cans from another shipment, showed the presence of peroxide in all 5 cans.

Between April 27 and June 3, 1939, the United States attorneys for the Southern District of Florida, the Western District of New York, the Southern District of California, the Eastern District of Michigan, District of Massachusetts, Southern District of Ohio, and the Northern District of Texas, acting upon reports by the Secretary of Agriculture, filed in their respective district courts libels praying seizure and condemnation of 451 cans of ether (ethyl oxide) in various lots at Tampa, Fla., Rochester, N. Y., Los Angeles, Calif., Detroit, Mich., Rutland, Mass., Dayton, Ohio, Buffalo, N. Y., and Dallas, Tex.: alleging that the article had been shipped in interstate commerce within the period from on or about November 19, 1938, to on or about May 4, 1939, by Merck & Co., Inc., in various shipments from New York, N. Y., Rahway, N. J., Newark, N. J., and St. Louis, Mo.; and charging adulteration and misbranding in violation of the Food and Drugs Act.

The article in all cases, except one shipment to Buffalo, N. Y., was alleged to be adulterated in that it was sold under names recognized in the United States Pharmacopoeia, i. e., "Ether" and "Ethyl Oxide," but differed from the standard of strength, quality, and purity as determined by the tests laid down in the pharmacopoeia, and its own standard of strength, quality, and purity was not stated on the label. In all cases it was alleged to be adulterated in that its strength and purity fell below the professed standard and quality under which it was sold, namely, "Ether U. S. P. 10," since it did not conform to the specifications of the said pharmacopoeia for ether because it contained peroxide.

The article was alleged to be misbranded in that the statement on the label, "Ether U. S. P. 10 * * * (Ethyl Oxide U. S. P. XI)," with respect to all lots but one and the statement "Ether U. S. P. 10" with respect to one lot were false and misleading since it did not conform to the specifications of the tenth revision of the United States Pharmacopoeia for ether and all lots, with one exception, failed to conform to the specifications of the eleventh revision of the pharmacopoeia for ethyl oxide.

Between May 23 and September 8, 1939, no claimant having appeared, judgments of condemnation were entered and the product was ordered destroyed with the exception of one lot which was ordered turned over to the Food and Drug Administration.

M. L. Wilson, *Acting Secretary of Agriculture.*

30877. Adulteration and misbranding of ether. U. S. v. Nine Cans of Ether. Default decree of condemnation and destruction. F. & D. No. 45287. Sample Nos. 53653–D, 53658–D.)

This product had been shipped in interstate commerce and remained unsold and in the original packages. At the time of examination it did not have the characteristic odor prescribed by the pharmacopoeia, but did have a foreign odor resembling that of bitter almonds.

On May 8, 1939, the United States attorney for the Eastern District of Michigan, acting upon a report by the Secretary of Agriculture, filed in the district court a libel praying seizure and condemnation of nine cans of ether at Detroit, Mich.; alleging that the article had been shipped on or about August 13, 1937, by Merck & Co., Inc., from Newark, N. J.; and charging adulteration and misbranding in violation of the Food and Drugs Act.

The article was alleged to be adulterated in that it was sold under a name recognized in the United States Pharmacopoeia, namely, "Ether," but differed from the standard of strength, quality, and purity as determined by the test laid down in the pharmacopoeia, and its own standard of strength, quality, and purity was not stated on the label.

Misbranding was alleged in that the statement on the label, "Ether for Anesthesia * * * U. S. P.," was false and misleading since the article failed to comply with the specifications of the pharmacopoeia for ether, because of the presence of a foreign odor resembling that of bitter almonds.

On June 6, 1939, no claimant having appeared, judgment of condemnation was entered and the product was ordered destroyed.

M. L. Wilson, *Acting Secretary of Agriculture.*

30878. Adulteration and misbranding of quinine sulfate pills. U. S. v. McKesson & Robbins, Inc. Plea of nolo contendere. Fine, $500. (F. & D. No. 42686. Sample Nos. 14328–D, 14329–D, 25694–D, 26494–D, 26910–D, 31701–D.)

These pills were materially short in quinine sulfate because the 5 shipments of pills labeled as containing 2 grains each were found to contain 1.60, 1.67, 1.65, 1.53, and 1.60 grains, respectively, of quinine sulfate; and the one shipment labeled as containing 5 grains, was found to contain 2.78 grains of quinine sulfate.

On June 2, 1939, the United States attorney for the District of Connecticut, acting upon a report by the Secretary of Agriculture, filed in the district court an information against McKesson & Robbins, Inc., Bridgeport, Conn., alleging shipment by said defendant in violation of the Food and Drugs Act on or about July 16, 19, and 26 and August 24, 1938, from the State of Connecticut into the States of New York and New Jersey, of quantities of 2-grain quinine sulfate pills that were adulterated and misbranded. The information alleged further that on or about December 7, 1937, McKesson & Robbins, Inc., sold a quantity of 5-grain pills and a quantity of 2-grain pills under a guaranty that they complied with the Federal Food and Drugs Act, which were shipped from the State of Connecticut into the State of Massachusetts on January 13, 1938, and which were adulterated.

Adulteration of the products in all shipments was charged in that their strength fell below the professed standard and quality under which they were sold, namely, "Pills * * * 2-grain quinine sulphate," "Quinine sulphate pills, 2-gr.," or "Quinine sulphate U. S. P. * * * 5-grain pills," respectively, borne on the bottles, cartons, or boxes.

Misbranding of the product in all shipments, except that of the 5-grain pills and the 2-grain pills shipped into Massachusetts, was charged in that the statements, "Pills * * * 2-grain quinine sulphate" and "Quinine sulphate pills, 2-gr.," were false and misleading.

On July 11, 1939, a plea of nolo contendere was entered on behalf of the defendant and a fine of $500 was imposed.

Harry L. Brown, *Acting Secretary of Agriculture.*

30879. Misbranding of Hed Klear. U. S. v. 21 Packages of Hed Klear (and 2 seizure actions against other shipments of the same product). Default decrees of condemnation and destruction. (F. & D. Nos. 44678, 44875, 45018. Sample Nos. 36141–D, 50599–D, 64026–D.)

The labeling of this product bore false and fraudulent curative and therapeutic claims.

On January 16, February 24, and March 24, 1939, the United States attorneys for the Northern District of California, District of Idaho, and the Eastern

District of Washington, acting upon reports by the Secretary of Agriculture, filed in their respective district courts libels praying seizure and condemnation of 21 packages of Hed Klear at San Francisco, Calif., 9 packages at Boise, Idaho, and 9 packages of the same product at Walla Walla, Wash.; alleging that the article had been shipped in interstate commerce on or about October 28 and November 5, 1938, by the Van Patten Pharmaceutical Co. from Chicago, Ill.; and charging misbranding in violation of the Food and Drugs Act as amended.

The article consisted of a liquid and a vaporizer. Upon analysis, a sample of the article was found to consist of a mixture of volatile oils including eucalyptus oil and menthol, grain alcohol, isopropyl alcohol, acetone, and water.

Misbranding was alleged in that the following statements appearing in the labeling, "For relief of discomfort in Head Colds, Rhinitis, Nasal Catarrh, Sinus Irritation and Hay Fever. Use according to directions. [Diagrammatic sketch of apparatus in use] Showing how the breath carries soothing vapors of Hed Klear Essence through the nasal passages to all inflamed, irritated parts, thus affording relief of discomfort in Head Colds, Rhinitis, Nasal Catarrh, Sinus Irritation and Hay Fever," were statements regarding the curative or therapeutic effects of the article and were false and fraudulent.

The libels filed in the Northern District of California and the Eastern District of Washington alleged that the article was also misbranded in violation of the Federal Food, Drug, and Cosmetic Act, as reported in notices of judgment on drugs and devices published under that act.

On April 14, May 10, and July 19, 1939, no claimant having appeared, judgments of condemnation were entered and the product was ordered destroyed.

M. L. Wilson, *Acting Secretary of Agriculture.*

30880. Adulteration and misbranding of ether U. S. P. 10 (ethyl oxide U. S. P. XI). U. S. v. 40 Cans of "Ether U. S. P. 10 * * * (Ethyl Oxide U. S. P. XI)." (F. & D. No. 45419. Sample No. 59947–D.)

This product failed to meet the tests laid down in the United States Pharmacopoeia, since it contained acid in excess of the amount prescribed by that authority.

On or about June 1, 1939, the United States attorney for the District of Connecticut, acting upon a report by the Secretary of Agriculture, filed in the district court a libel praying seizure and condemnation of 40 cans of ether at Hartford, Conn.; alleging that the article had been shipped in interstate commerce on or about March 24, 1939, by Merck & Co., Inc., from Rahway, N. J.; and charging adulteration and misbranding in violation of the Food and Drugs Act.

The article was alleged to be adulterated in that it was sold under names recognized in the United States Pharmacopoeia, i. e., "Ether" and "Ethyl Oxide," but differed from the standard of strength, quality, and purity as determined by the tests laid down in the said pharmacopoeia and its own standard of strength, quality, and purity was not stated on the label. It was alleged to be adulterated further in that its strength and purity fell below the professed standard and quality under which it was sold, "Ether U. S. P. 10," since it did not conform to the specifications of the tenth revision of the United States Pharmacopoeia, because of the presence of excess acid.

Misbranding was alleged in that the statement on the label, "Ether U. S. P. 10 * * * (Ethyl Oxide U. S. P. XI)," was false and misleading, since the article did not conform to the specifications of the tenth revision of the United States Pharmacopoeia for ether or to those of the eleventh revision of the pharmacopoeia for ethyl oxide.

On September 8, 1939, no claimant having appeared, judgment of condemnation was entered and the product was ordered destroyed.

M. L. Wilson, *Acting Secretary of Agriculture.*

30881. Misbranding of E E Powders. U. S. v. 936 Cartons of E E Powders. Default decree of condemnation and destruction. (F. & D. No. 44980. Sample No. 44932–D.)

This product was labeled as containing 4 grains of acetanilid per powder; whereas it contained a greater amount, namely, 4.99 grains.

On March 10, 1939, the United States attorney for the Western District of North Carolina, acting upon a report by the Secretary of Agriculture, filed in the district court a libel praying seizure and condemnation of 936 cartons of E E Powders at Lincolnton, N. C.; alleging that the article had been shipped

in interstate commerce on or about October 7, 1938, by E E Medicine Co. from Greensville, S. C.; and charging misbranding in violation of the Food and Drugs Act.

The article was alleged to be misbranded in that the statement on the shipping carton and envelope, "(Each Powder Contains 4 Grs. Acetanilid)," was false and misleading when applied to an article that contained a greater amount of acetanilid than was stated.

It also was alleged to be misbranded in violation of the Federal Food, Drug, and Cosmetic Act, as reported in notices of judgment on drugs and devices published under that act.

On April 8, 1939, no claimant having appeared, judgment of condemnation was entered and the product was ordered destroyed.

M. L. WILSON, *Acting Secretary of Agriculture.*

30882. Misbranding of Barmidon Tablets. U. S. v. Seven Bottles of Barmidon Tablets. Default decree of condemnation and destruction. (F. & D. Nos. 44563, 44564. Sample Nos. 58666–D, 58667–D.)

This product was labeled to create the impression that it had properties similar to antipyrine and that its therapeutic and toxic effects were similar to those of barbital; whereas it possessed the properties of aminopyrine, but not of antipyrine, and it possessed the therapeutic and toxic potentialities of aminopyrine in addition to those of barbital.

On December 22, 1938, the United States attorney for the Southern District of Ohio, acting upon a report by the Secretary of Agriculture, filed in the district court a libel praying seizure and condemnation of seven bottles containing 2,600 Barmidon Tablets at Dayton, Ohio; alleging that the article had been shipped in interstate commerce by Endo Products, Inc., from New York, N. Y., in part on or about October 26, 1938, and in part on or about November 25, 1938; and charging misbranding in violation of the Food and Drugs Act.

The article was alleged to be misbranded in that the statement on the label, "Dimethylaminoantipyrine diethylmalonylurea," was false and misleading since it created the impression that the article had properties similar to those of antipyrine; whereas it possessed the properties of aminopyrine and not those of antipyrine. It was alleged to be misbranded further in that the statement on the label, "Barmidon is a derivative of Barbital," was false and misleading since it created the impression that the therapeutic and toxic effects of the article were similar to those of barbital; whereas it possessed therapeutic and toxic potentialities of aminopyrine in addition to those of barbital.

The libel alleged that the article was also misbranded in violation of the Federal Food, Drug, and Cosmetic Act, as reported in notices of judgment on drugs and devices published under that act.

On February 8, 1939, no claimant having appeared, judgment of condemnation was entered and the product was ordered destroyed.

M. L. WILSON, *Acting Secretary of Agriculture.*

30883. Adulteration and misbranding of Palmer's Antiseptic Skin Lotion. U. S. v. 36 Bottles of Palmer's Antiseptic Skin Lotion. Default decree of condemnation and destruction. (F. & D. No. 44929. Sample No. 35008–D.)

This product was labeled to indicate that it was a vegetable compound; whereas it contained mercuric chloride (corrosive sublimate), a mineral. Its labeling bore false and fraudulent representations regarding its curative and therapeutic effects.

On March 3, 1939, the United States attorney for the Eastern District of Virginia, acting upon a report by the Secretary of Agriculture, filed in the district court a libel praying seizure and condemnation of 36 bottles of Palmer's Antiseptic Skin Lotion at Richmond, Va.; alleging that the article had been shipped in interstate commerce on or about November 25, 1938, by Solon Palmer from New York, N. Y.; and charging adulteration and misbranding in violation of the Food and Drugs Act.

Analysis showed that the article consisted essentially of mercuric chloride (corrosive sublimate, 0.36 gram per 100 cubic centimeters), alcohol (69 percent), acetone, turpentine oil, a fatty oil, perfume oils, and water.

The article was alleged to be adulterated in that its strength or purity fell below the professed standard or quality under which it was sold, namely, (display carton) "Palmer's Vegetable Cosmetic Lotion," since it contained mercuric chloride.

It was alleged to be misbranded in that the statement "Palmer's Vegetable Cosmetic Lotion," borne on the display carton, was false and misleading when applied to an article that contained mercuric chloride. It was alleged to be misbranded further in that the following statements appearing in the labeling, regarding its curative or therapeutic effects were false and fraudulent: (Display carton) "Avoid skin diseases by using Palmer's Lotion Soap Besides possessing in a mild form all the medicinal properties for which Palmer's Lotion is so celebrated this soap is desirable for all the general purposes of the toilet & bath Palmer's vegetable Cosmetic Lotion is a well known remedy for eczema, pimples * * * Use Palmer's Lotion and Lotion Soap and avoid skin trouble Palmer's Vegetable Cosmetic Lotion for pimples, scaly & unsightly eruptions, tetter, eczema * * * Palmer's Lotion removes pimples Palmer's Lotion beautifies by removing eczema, pimples * * * scaly eruptions. Palmer's Lotion * * * aids to prevent * * * barber's itch"; (retail carton) "Palmer's * * * Skin Lotion for * * * acne * * * Palmer's Lotion for any cuts or irritations"; (bottle label) "* * * for acne * * *."

The article was also alleged to be adulterated and misbranded in violation of the Federal Food, Drug, and Cosmetic Act, as reported in notices of judgment on drugs and devices published under that act.

On May 31, 1939, no claimant having appeared, judgment of condemnation was entered and the product was ordered destroyed.

M. L. Wilson, *Acting Secretary of Agriculture.*

30884. Misbranding of Peranol. U. S. v. Six Bottles of Peranol and Nine Packages of Peranol with Special Medicator. Default decrees of condemnation and destruction. (F. & D. Nos. 44679, 44680. Sample Nos. 58805–D, 58806–D.)

This product consisted of a medicament for use as a nasal spray, one lot of which was accompanied by a vaporizer. Its labeling bore false and fraudulent curative and therapeutic claims and it also failed to bear a statement of the quantity or proportion of alcohol contained in the article.

On January 19, 1939, the United States attorney for the Southern District of Indiana, acting upon a report by the Secretary of Agriculture, filed in the district court libels praying seizure and condemnation of six bottles of Peranol and nine packages of Peranol with Special Medicator at Indianapolis, Ind.; alleging that the articles had been shipped in interstate commerce on or about September 18 and November 26, 1938, by Peranol Products from Chicago, Ill.; and charging misbranding in violation of the Food and Drugs Act as amended.

Analysis of the article showed that it consisted of a mixture of volatile oils including eucalyptus oil, camphor, and menthol, and approximately 21 percent of alcohol.

The article was alleged to be misbranded in that the package or bottle failed to bear on its label a statement of the quantity or proportion of alcohol contained in the article.

It was alleged to be misbranded further in that the statements appearing in the circular accompanying it, "Peranol was developed and is intended as an application for the nasal cavities . . . If faithfullly used as directed it should not only aid in the alleviation of congestion, irritation and discomfort, such as are commonly associated with . . . hay fever, nasal catarrh and rose fever, but also assist nature in warding off and resisting the development of such conditions," were statements regarding its curative and therapeutic effects and were false and fraudulent.

The vaporizing device accompanying one of the lots was charged to be misbranded in violation of the Federal Food, Drug, and Cosmetic Act, as reported in notices of judgment on drugs and devices published under that act.

On April 7, 1939, no claimant having appeared, judgments of condemnation were entered and the products were ordered destroyed.

M. L. Wilson, *Acting Secretary of Agriculture.*

30885. Adulteration of glucose solution. U. S. v. 1,176 Ampuls of Sterile Solution Glucose (and 3 other seizure actions against the same product). Default decrees of condemnation and destruction. (F. & D. Nos. 44718, 44726, 44727, 44728, 44746, 44994. Sample Nos. 42301–D, 42308–D, 62541–D, 62974–D.)

This product contained a substance or substances foreign to glucose (dextrose), which caused unfavorable reactions in patients to whom it was administered.

On January 23, 1939, the United States attorney for the Eastern District of Pennsylvania, acting upon a report by the Secretary of Agriculture, filed in the

district court a libel praying seizure and condemnation of 1,176 ampuls of solution glucose at Philadelphia, Pa. On January 25, 1939, but 123 ampuls having been seized under the libel, and the remainder having been distributed, an additional libel was filed against 1,000 ampuls of these distributed lots which had been located at various points in Philadelphia, Pa. On January 27, 1939, there was filed in the same district court a libel against 190 vials of glucose solution at Ridley Park, Pa. On March 15, 1939, the United States attorney for the Western District of Louisiana filed a libel against 121 ampuls of the product at Alexandria, La. The libels alleged that the article had been shipped in interstate commerce within the period from on or about June 15, 1938, to on or about December 21, 1938, by William A. Fitch from New York, N. Y.; and charged that it was adulterated in violation of the Food and Drugs Act.

The libels filed in the Eastern District of Pennsylvania alleged that it was adulterated in that its purity fell below the professed standard or quality under which it was sold, namely, "Sterile Solution * * * Glucose (Dextrose)," since it contained cellular fragments and a substance or substances other than glucose (dextrose), which caused untoward effects when administered to human beings; whereas pure glucose solution does not contain cellular fragments or substances which produce such effects. The libel filed in the Western District of Louisiana alleged that the article was adulterated in that its purity fell below the professed standard or quality under which it was sold, namely, "Sterile Solution * * * Glucose (Dextrose)," since it contained a substance or substances foreign to glucose (dextrose) which caused an abnormal rise in body temperature of animals to which it was administered.

The article was also alleged to be misbranded in violation of the Federal Food, Drug, and Cosmetic Act, as reported in notices of judgment on drugs and devices published under that act.

On February 15 and 20 and May 2, 1939, no claimant having appeared, judgments of condemnation were entered and the lots seized in the Eastern District of Pennsylvania were ordered destroyed, and the lot seized in the Western District of Louisiana was ordered delivered to this Department for further investigation.

M. L. WILSON, *Acting Secretary of Agriculture.*

30886. Misbranding of George's Compound. U. S. v. Nick A. George. Plea of guilty. Fine, $100. (F. & D. No. 42611. Sample No. 27318–D.)

This product was labeled to indicate that it was composed solely of herbs and that it had been examined and approved by the Government and that it complied with all the pure food and drug laws of the United States; whereas it consisted in part of a mineral drug, sodium salicylate, and had not been so examined and approved and did not comply with the Food and Drugs Act.

On November 30, 1938, the United States attorney for the District of Wyoming, acting upon a report by the Secretary of Agriculture, filed in the district court an information against Nick A. George, Caspar, Wyo., alleging shipment by him in violation of the Food and Drugs Act on or about March 29, 1938, from Caspar, Wyo., into the State of Montana, of a quantity of George's Compound that was misbranded.

The article was alleged to be misbranded in that the statements, "Herb Compound" and "It complies with all pure food and drug laws of the United States," appearing in the circular, were false and misleading in that they represented that the article was compounded solely of herbs, that it had been examined and approved by the Government, and that it complied with all food and drug laws of the United States; whereas it had not been compounded solely of herbs but did consist in part of a mineral drug—sodium salicylate, it had not been examined and approved by the Government, and it did not comply with the Food and Drugs Act of 1906.

On February 13, 1939, a plea of guilty was entered on behalf of the defendant and the court imposed a fine of $100 without costs.

M. L. WILSON, *Acting Secretary of Agriculture.*

30887. Misbranding of rubbing alcohol, witch hazel, Russian oil, cod-liver oil, and rubbing alcohol compound. U. S. v. M. S. Walker, Inc. Plea of guilty. Fine, $10. (F. & D. No. 42684. Sample Nos. 35716–D, 35719–D, 35747–D, 35748–D, 35749–D, 39750–D.)

These products were all found to be short of the declared volume.

On April 4, 1939, the United States attorney for the District of Massachusetts, acting upon a report by the Secretary of Agriculture, filed in the district

court an information against M. S. Walker, Inc., Boston, Mass., alleging shipment by said defendant in violation of the Food and Drugs Act on or about September 13 and October 18, 1938, from the State of Massachusetts into the State of New Hampshire of quantities of the above-named products, which were misbranded. The articles were labeled in part variously: "Sterling Quality Rubbing Alcohol [or "Triple Distilled Witch Hazel," "Tasteless Pure White Russian Oil," or "Pure Norwegian Cod Liver Oil"] * * * Sterling Cut-Rate Stores of New England," or "Toppan's Rubbing Alcohol Compound * * * Distributed by the Warren Toppan Co., Manufacturing Pharmacists, Lynn, Mass."

Each of the above-named articles was alleged to be misbranded in that the statements on the labels, (rubbing alcohol) "Contents 16 Fl. Oz.," (Russian oil and cod-liver oil) "16 Fl. Oz.," (witch hazel) "Contents 8 Fluid Ounces," and (rubbing alcohol compound) "Full Pint," were false and misleading since each of the containers of the articles contained a smaller amount than that declared.

On September 19, 1939, a plea of guilty was entered on behalf of the defendant and the court imposed a fine of $10.

M. L. Wilson, *Acting Secretary of Agriculture.*

30888. Misbranding of prophylactics. U. S. v. 2-1/6 Gross of Prophylactics. Default decree of condemnation and destruction. (F. & D. No. 45491. Sample Nos. 60156–D, 60158–D.)

Samples of this product were found to be defective in that they contained holes.

On June 13, 1939, the United States attorney for the Southern District of New York, acting upon a report by the Secretary of Agriculture, filed in the district court a libel praying seizure and condemnation of 2⅙ gross of prophylactics at New York, N. Y.; alleging that the article had been shipped in interstate commerce on or about May 8, 1939, by Stowall & Co. from San Francisco, Calif.; and charging misbranding in violation of the Food and Drugs Act. The article was labeled in part: "Genuine Purple Goldbeaters."

It was alleged to be misbranded in that the statement regarding its therapeutic effect borne on the envelope, "for prevention of disease," was false and fraudulent since it was incapable of producing the effect claimed.

On July 7, 1939, no claimant having appeared, judgment of condemnation was entered and the product was ordered destroyed.

M. L. Wilson, *Acting Secretary of Agriculture.*

30889. Adulteration and misbranding of gauze bandages. U. S. v. 12 Dozen Packages of Gauze Bandages. Default decree of condemnation and destruction. (F. & D. No. 45400. Sample No. 30728–D.)

This product had been shipped in interstate commerce and remained unsold and in the original packages. At the time of examination it was found to be contaminated with viable micro-organisms.

On or about May 29, 1939, the United States attorney for the Northern District of Texas, acting upon a report by the Secretary of Agriculture, filed in the district court a libel praying seizure and condemnation of 12 dozen packages of gauze bandages at Big Spring, Tex.; alleging that the article had been shipped on or about March 27, 1939, by Scotch Tone Co. from Oklahoma City, Okla.; and charging adulteration and misbranding in violation of the Food and Drugs Act.

The article was alleged to be adulterated in that its purity fell below the professed standard of quality under which it was sold since it was represented to be sterile; whereas it was not sterile.

It was alleged to be misbranded in that the statements on the carton containing 1 dozen bandages, "Hospital Brand Gauze Bandages Sterilized after Packaging," and the statement on the carton for individual bandages, "Hospital Bandage * * * Prepared under the most sanitary and scientific conditions. Absolute satisfaction guaranteed," and the design of a nurse and a surgeon appearing on the carton containing the individual bandages, were false and misleading when applied to this article, which was not sterile but was contaminated with viable micro-organisms and therefore was unsuitable for hospital use or for use by surgeons and nurses.

On August 16, 1939, no claimant having appeared, judgment of condemnation was entered and the product was ordered destroyed.

M. L. Wilson, *Acting Secretary of Agriculture.*

30890. Adulteration and misbranding of obstetrical sutures. U. S. v. 1¾ Dozen Boxes, each containing 12 Tubes of Obstetrical Sutures. Default decree of condemnation and destruction. (F. & D. No. 44736. Sample No. 59345–D.)

This product had been shipped in interstate commerce and remained unsold and in the original packages. At the time of examination it was found to be contaminated with viable micro-organisms.

On January 27, 1939, the United States attorney for the Middle District of Pennsylvania, acting upon a report by the Secretary of Agriculture, filed in the district court a libel praying seizure and condemnation of 1¾ dozen boxes, each containing 12 tubes of obstetrical sutures, at Scranton, Pa.; alleging that the article had been shipped on or about June 24, 1937, by Johnson & Johnson from New Brunswick, N. J.; and charging adulteration and misbranding in violation of the Food and Drugs Act.

The article was alleged to be adulterated in that its purity fell below the professed standard or quality under which it was sold, namely, "Sterile * * * sutures," since it was not sterile.

It was alleged to be misbranded in that the statements on the label, "Tested for Sterility. Samples from this lot of sutures have been tested in our Bacteriological Laboratories and found sterile. Bacteriological Test No. E 13," and "Sterile * * * Sutures," were false and misleading, since they created the impression that the article was sterile; whereas it was not, but was contaminated with viable micro-organisms and was unsuitable for surgical use.

On August 25, 1939, no claimant having appeared, judgment of condemnation was entered and the product was ordered destroyed.

M. L. Wilson, *Acting Secretary of Agriculture.*

30891. Adulteration and misbranding of eucalyptus oil. U. S. v. 84 Pounds of Oil Eucalyptus. Default decree of condemnation and destruction. (F. & D. No. 45424. Sample No. 45799–D.)

This product did not comply with the requirements of the United States Pharmacopoeia in that it was not soluble in 5 volumes of 70 percent alcohol and it contained less than 64 percent of eucalyptol.

On June 1, 1939, the United States attorney for the Northern District of Illinois, acting upon a report by the Secretary of Agriculture, filed in the district court a libel praying seizure and condemnation of 84 pounds of eucalyptus oil at Chicago, Ill.; alleging that the article had been shipped on or about April 21, 1939, by the Citrus & Allied Essential Oil Co. from New York, N. Y.; and charging adulteration and misbranding in violation of the Food and Drugs Act.

The article was alleged to be adulterated in that it was sold under a name recognized in the United States Pharmacopoeia but differed from the standard of strength, quality, and purity as determined by the test laid down in the pharmacopoeia, and its own standard of strength, quality, and purity was not stated on the label.

It was alleged to be misbranded in that the statement on the label, "Oil Eucalyptus," was false and misleading.

On July 31, 1939, no claimant having appeared, judgment of condemnation was entered and the product was ordered destroyed.

M. L. Wilson, *Acting Secretary of Agriculture.*

30892. Adulteration and misbranding of gauze bandages. U. S. v. 24 Dozen Packages of Gauze Bandages (and 1 other seizure action against the same product). Default decrees of condemnation and destruction. (F. & D. Nos. 45303, 45456, 45457. Sample Nos. 30756–D, 40964–D.)

This product had been shipped in interstate commerce and remained unsold and in the original packages. At the time of examination it was found to be contaminated with viable micro-organisms.

On May 13 and June 14, 1939, the United States attorneys for the Northern and the Western Districts of Texas, acting upon reports by the Secretary of Agriculture, filed in their respective district courts libels praying seizure and condemnation of 24 dozen packages of gauze bandages at Lubbock, Tex., and 92 dozen packages of gauze bandages at El Paso, Tex.; alleging that the article had been shipped from New Rochelle, N. Y., by the American White Cross Laboratories—the lot at Lubbock, on or about April 1, 1939, and that at El Paso, on or about May 28, 1938; and charging adulteration and misbranding of the former lot and misbranding of the latter in violation of the Food and Drugs Act.

The lot seized at Lubbock was alleged to be adulterated in that its purity fell below the professed standard or quality under which it was sold, namely, (on 1 dozen containers) "Sterilized," since it was not sterile but was contaminated with viable micro-organisms.

Both lots were alleged to be misbranded in that the statements, (lot at Lubbock, 1 dozen containers) "Hospital Brand Gauze Bandages, Sterilized after packaging," and (both lots, labels) "Hospital bandage," "This Bandage is * * * Prepared Under the Most Sanitary and Scientific Conditions. Absolute Satisfaction Guaranteed," and the design of a surgeon and nurse, also appearing on the labels of both lots, were false and misleading when applied to an article that was not sterile but was contaminated with viable micro-organisms.

On July 31 and August 16, 1939, no claimant having appeared, judgments of condemnation were entered and the product was ordered destroyed.

M. L. Wilson, *Acting Secretary of Agriculture.*

30893. Adulteration and misbranding of First Aid Kits. U. S. v. 93 First Aid Kits. Default decree of condemnation and destruction. (F. & D. No. 45401. Sample No. 41270–D.)

This product had been shipped in interstate commerce and remained unsold and in the original packages. At the time of examination the absorbent cotton and the surgical gauze in the kits were found to be contaminated with viable micro-organisms.

On May 25, 1939, the United States attorney for the District of Montana, acting upon a report by the Secretary of Agriculture, filed in the district court a libel praying seizure and condemnation of 93 first aid kits at Billings, Mont.; alleging that the article had been shipped on or about March 16, 1939, by the American White Cross Laboratories, Inc., from New Rochelle, N. Y.; and charging adulteration and misbranding in violation of the Food and Drugs Act.

Adulteration was alleged in that the purity of the article fell below the professed standard and quality under which it was sold, namely, "Surgical Gauze" and "Absorbent Cotton," in that the kits were not sterile but were contaminated with viable micro-organisms.

Misbranding was alleged in that the statements (absorbent cotton, carton) "Sterilized, The White Cross of Perfection is Your Protection Sterilized After Packaging," (surgical gauze, carton) "Sterilized The White Cross of Perfection is Your Protection Surgical Gauze Sterilized after Packaging," (card enclosed in kits) "Often small cuts or burns are not considered serious and are dismissed too lightly. The slightest injury if not treated at once may cause infection. Keep a First Aid Kit handy and be prepared in an emergency. Use American White Cross surgical dressings. None better," (leaflet enclosed in kits) "Bleeding Wounds With Severe Bleeding Veins—* * * Apply to sterilized gauze pad tightly directly over the wound * * * Arteries—* * * cover with sterilized gauze * * * Nose Bleeding—Hold head back. Breathe in through the nose and out through the mouth. If these fail, pack nostril with sterilized gauze or cotton. * * * Cuts and Wounds * * * Apply antiseptic and sterilized gauze dressing," were false and misleading, since the gauze and absorbent cotton were not sterile but were contaminated with viable micro-organisms.

On July 11, 1939, no claimant having appeared, judgment of condemnation was entered and the product was ordered destroyed.

M. L. Wilson, *Acting Secretary of Agriculture.*

30894. Adulteration and misbranding of sandalwood oil and misbranding of imitation sandalwood oil. U. S. v. Magnus, Mabee & Reynard, Inc. Plea of guilty. Fine, $960. (F. & D. No. 42712. Sample Nos. 1714–D, 8053–D, 10832–D, 10833–D, 13030–D, 15925–D, 16212–D, 16213–D, 16253–D, 16254–D, 16255–D, 16471–D, 16472–D, 18028–D, 21518–D, 23743–D, 23744–D, 23745–D, 24355–D, 24865–D, 28966–D, 30053–D.)

This case involved a large number of shipments of a product labeled, "Oil Sandalwood East Indian U. S. P.," which differed from the standard for sandalwood oil laid down in the United States Pharmacopoeia since it did not have the characteristic odor of sandalwood and contained terpineol, an adulterant. There were also included two shipments of a product intended for use as a drug and labeled "Oil Sandalwood Imitation." Imitation drugs are misbranded in violation of the Food and Drugs Act.

On July 17, 1939, the United States attorney for the Southern District of New York, acting upon a report by the Secretary of Agriculture, filed in the

district court an information against Magnus, Mabee & Reynard, Inc., New York, N. Y., alleging shipment by said company in violation of the Food and Drugs Act within the period from on or about March 31, 1937, to on or about June 11, 1938, from the State of New York into the States of Pennsylvania, New Jersey, Oklahoma, Texas, California, Michigan, Louisiana, West Virginia, Georgia, and South Carolina of quantities of sandalwood oil which was adulterated and misbranded and of quantities of imitation sandalwood oil which was misbranded.

The sandalwood oil was alleged to be adulterated in that it was sold under a name recognized in the United States Pharmacopoeia but differed from the standard of strength, quality, and purity as determined by the test laid down in said pharmacopoeia since it was not the volatile oil distilled with steam from the dried heartwood of *Santalum album* Linné, it did not have the characteristic odor of sandalwood, and it contained terpineol, which is not mentioned in the pharmacopoeia as a constituent of the product; whereas the pharmacopoeia requires that sandalwood oil (oil of santal) be the volatile oil distilled with steam from the dried heartwood of *Santalum album* Linné, and that it have the characteristic odor of sandalwood; and its own standard of strength, quality, and purity was not declared on the container. It was alleged to be adulterated still further in that its purity fell below the professed standard and quality under which it was sold.

The sandalwood oil was alleged to be misbranded in that the statement "Oil Sandalwood * * * U. S. P.," borne on the label, was false and misleading. It was alleged to be misbranded further in that it was a product composed in part of a terpineol, which had been prepared in imitation of sandalwood oil and had been offered for sale and sold under the name of another article, oil sandalwood.

The imitation sandalwood oil was alleged to be misbranded in that it was an imitation of another article, namely, sandalwood oil, a drug.

On August 11, 1939, a plea of guilty having been entered on behalf of the defendant, the court imposed a fine of $960, i.e., $30 on each of the 32 counts of the information.

M. L. Wilson, *Acting Secretary of Agriculture.*

30895. Misbranding of Sodasal. U. S. v. 21 Packages of Sodasal (and 1 other seizure action against the same product). Default decrees condemnation and destruction. (F. & D. Nos. 44963, 45087. Sample Nos. 42971–D, 52224–D.)

This product was misbranded because of false and misleading representations in the labeling regarding its composition, false and misleading claims that it was a safe and appropriate remedy for the disease conditions enumerated in the labeling, and false and fraudulent claims regarding its curative and therapeutic effectiveness.

On March 9 and 25, 1939, the United States attorney for the Western District of Pennsylvania, acting upon reports by the Secretary of Agriculture, filed in the district court libels praying seizure and condemnation of 36 packages [bottles] of Sodasal at Pittsburgh, Pa.; alleging that the article had been shipped in interstate commerce on or about February 18 and 21, 1939, by the Sodasal Laboratories from Detroit, Mich., and charging misbranding in violation of the Food and Drugs Act as amended.

Analysis showed that the article contained aminopyrine (approximately 8 grains per fluid ounce), sodium salicylate (2 samples examined contained 33.5 grains and 15 grains, respectively), sodium bicarbonate, sugar, and water.

The article was alleged to be misbranded in that the designations, (1 shipment) "Alkaline Sodasal Compound" and (other shipment) "Anti-Acid Sodasal Compound," were false and misleading since it contained, in addition to alkali and sodium salicylate, a material amount of aminopyrine, in that the statement on the bottle and in the circular contained in the package, "Sodasal contains no aspirin; no acetanilid or other blood thinners," was false and misleading since the article contained aminopyrine, the consumption of which might result in serious depletion of the white blood cells; in that the statement on the bottle, "If ears ring cut down the dose," was false and misleading in that it created the impression that the article might be safely consumed unless it caused ringing of the ears, whereas its consumption might be dangerous even though it did not cause ringing of the ears; in that the statement in the circular, "Sodasal contains a U. S. P. dose of salicylates of such proven value in rheumatoid suffering," was false and

misleading since it created the impression that the active ingredients in the article were salicylates, whereas it also contained aminopyrine; in that the statement in the circular contained in the package, "For U. S. Government warnings against these 'Undertaker Friends'—acetanilid antipyrine chloral Read Labels carefully. Notice whether news ads claims compare with label statements. Our scientific staff compounds Sodasal Laboratory medicinals right in every respect. Finally we assure you that everything Sodasal Laboratories makes contains only tested ingredients of Unquestionable Merit," were false and misleading since they created the impression that the article did not contain dangerous drugs, whereas it contained aminopyrine, a dangerous drug; in that statements and designs appearing on the package and in the circular were false and misleading since they created the impression that the article was a safe and appropriate remedy for the disease conditions mentioned, whereas it was not a safe and appropriate treatment but was a dangerous drug. It was alleged to be misbranded further in that certain statements in the circular regarding its curative or therapeutic effectiveness falsely and fraudulently represented that it was effective as an alkaline treatment; effective as a treatment for rheumatic pains, aching muscles, lumbago and simple, non-fever grippy discomfort; effective as an anti-rheumatic anodyne, diuretic, and alkalizer; and effective to give prompt relief from pain, knife-like pain, racking pain, and rheumatoid suffering, to flush the kidneys, to expel uric acid, poisonous toxins, and other impurities; to double the kidney flow and to fight blood acidity; effective as a treatment of serious ailments which often develop into kidney, blood, and heart trouble; effective in the treatment of stiffness, soreness, swelling or shrinkage in muscles and joints; effective to bring freedom from pain and to relieve torturing pains and agony and effective as a treatment for advanced (chronic) and recurring cases.

The libels charged that the article was also misbranded in violation of the Federal Food, Drug, and Cosmetic Act, as reported in notices of judgment on drugs and devices published under that act.

On April 17, 1939, no claimant having appeared, judgments of condemnation were entered and the product was ordered destroyed.

M. L. Wilson, *Acting Secretary of Agriculture.*

30896. Adulteration and misbranding of peroxide of hydrogen. U. S. v. 192 Bottles (4-Ounce Size) and 68 Bottles (16-Ounce Size) of Peroxide of Hydrogen. Default decree of condemnation and destruction. (F. & D. No. 44848. Sample No. 39824–D.)

This product had been shipped in interstate commerce and remained unsold and in the original packages. At the time of examination it was found to contain not more than 4.58 percent of hydrogen dioxide, whereas 6 percent was declared on the label.

On or about February 16, 1939, the United States attorney for the Western District of Washington, acting upon a report by the Secretary of Agriculture, filed in the district court a libel, and on May 3, 1939, an amended libel, praying seizure and condemnation of 192 bottles (4-ounce size) and 68 bottles (16-ounce size) of peroxide of hydrogen at Tacoma, Wash.; alleging that the article had been shipped on or about January 24, 1939, by the Columbia Laboratories from Wilmington, Calif.; and charging adulteration and misbranding in violation of the Food and Drugs Act.

The article was alleged to be adulterated in that its strength fell below the professed standard and quality under which it was sold, namely, "Active Ingredient Hydrogen Dioxide 6 per cent," since it did contain less than 6 percent of hydrogen dioxide.

It was alleged to be misbranded in that the statement "Active Ingredient Hydrogen Dioxide 6 per cent" was false and misleading.

On August 23, 1939, no claimant having appeared, judgment of condemnation was entered and the product was ordered destroyed.

M. L. Wilson, *Acting Secretary of Agriculture.*

30897. Adulteration and misbranding of absorbent cotton. U. S. v. 192 Packages and 350 Packages of Absorbent Cotton. Default decree of condemnation and destruction. (F. & D. No. 38464. Sample Nos. 6139–C, 6140–C.)

This product, which had been shipped in interstate commerce, was found at the time of examination to be contaminated with viable micro-organisms. One lot was falsely labeled as to the name of the manufacturer and the place of manufacture.

On October 26, 1936, the United States attorney for the Eastern District of Wisconsin, acting upon a report by the Secretary of Agriculture, filed in the district court a libel praying seizure and condemnation of 542 packages of absorbent cotton at Milwaukee, Wis.; alleging that the article had been shipped in interstate commerce on or about July 30 and August 5, 1936, by American White Cross Laboratories, Inc., from Cape Girardeau, Mo.; and charging adulteration and misbranding in violation of the Food and Drugs Act. The article was labeled in part: (A portion) "Sterilized White Cross Absorbent Cotton"; (remainder) "Hi-Test Absorbent Cotton Hi-Test Laboratories Cleveland, Ohio."

It was alleged to be adulterated in that its purity fell below the professed standard and quality under which it was sold, namely, "Sterilized," since it was not sterile but was contaminated with viable micro-organisms.

Misbranding was alleged in that the statements in the labeling, (White Cross brand) "Sterilized," and "The White Cross of Perfection is Your Protection," and (Hi-Test brand) "Sterilized," "Hi-Test Hospital Cotton," and "Hi-Test Absorbent Cotton," were false and misleading when applied to cotton that was not sterile. The Hi-Test brand was alleged to be misbranded further in that the statement on the label, "Hi-Test Laboratories Cleveland, Ohio," was false and misleading since it did not give the correct name and address of the manufacturer of the article.

On April 26, 1939, the claimant having withdrawn its claim and answer, judgment of condemnation was entered and the product was ordered destroyed.

M. L. Wilson, *Acting Secretary of Agriculture.*

30898. Adulteration and misbranding of gauze roller bandages, plain gauze packets, and plain gauze cotton-wound applicators. U. S. v. 914 Packages of Gauze Roller Bandage (and two other seizure actions against similar products). Default decrees of condemnation and destruction. (F. & D. Nos. 38984, 38985, 38986. Sample Nos. 28001–C, 28002–C, 28003–C.)

These products had been shipped in interstate commerce and remained unsold and in the original packages. At the time of examination they were found to be contaminated with viable micro-organisms.

On January 25, 1937, the United States attorney for the Northern District of California, acting upon a report by the Secretary of Agriculture, filed in the district court libels praying seizure and condemnation of 914 packages of gauze roller bandages, 132 packets of gauze, and 64 packets of cotton-wound applicators at San Francisco, Calif.; alleging that the articles had been shipped by the Mine Safety Appliances Co. from Pittsburgh, Pa., within the period from on or about November 22, 1935, to on or about October 14, 1936; and charging adulteration and misbranding in violation of the Food and Drugs Act.

The gauze roller bandages were alleged to be adulterated in that their purity fell below the professed standard or quality under which they were sold, namely, "Sterilized," since they were not sterile but were contaminated with viable micro-organisms. They were alleged to be misbranded in that the statements "Sterilized" and "Safety" and the word "Safety," forming a part of the firm name, "Mine Safety Appliances Co.," borne on the labeling, were false and misleading when applied to articles that were not sterile.

The gauze packets (2 lots) were alleged to be adulterated in that their purity fell below the professed standard or quality under which they were sold, namely, "Sterilized" or "Sterile," since they were not sterile but were contaminated with viable micro-organisms. They were alleged to be misbranded in that the statements (one lot) "Gauze Packet * * * Sterilized" (a second lot) "Sterilized," and the word "Safety" constituting part of the firm name "Mine Safety Appliances Co.," borne on the labeling, were false and misleading when applied to articles that were not sterile.

The cotton-wound applicators were alleged to be adulterated in that their purity fell below the professed standard or quality under which they were sold, namely, "Cotton-Wound Applicators * * * Mine Safety Appliances Co.," since such labeling is applicable only to sterile articles, and these articles were contaminated with viable micro-organisms. They were alleged to be misbranded in that the word "Safety" forming a part of the firm name, "Mine Safety Appliances Co.," was false and misleading, since the articles were not safe but were contaminated with viable micro-organisms.

On July 1, 1939, default decrees of condemnation were entered and the products were ordered destroyed.

M. L. Wilson, *Acting Secretary of Agriculture.*

30899. Misbranding of adhesive compress. U. S. v. 33,500 Envelopes of Adhesive Compress. Default decree of condemnation and destruction. (F. & D. No. 39093. Sample No. 28024–C.)

This product had been shipped in interstate commerce and remained unsold and in the original unbroken packages. At the time of examination it was found to be contaminated with viable micro-organisms.

On February 16, 1937, the United States attorney for the Northern District of California, acting upon a report by the Secretary of Agriculture, filed in the district court a libel praying seizure and condemnation of 33,500 envelopes of adhesive compress at San Francisco, Calif.; alleging that the article had been shipped on or about January 28, 1937, by the Bay Co. from Versailles, Conn., and charging misbranding in violation of the Food and Drugs Act. The article was labeled in part: "One Inch Adhesive Compressed E D Bullard Company * * * San Francisco."

Misbranding was alleged in that the statements on the label, "A protective dressing for minor injuries remove covering from plaster and place pad over wound," were false and misleading when applied to an article which was contaminated with bacteria.

On July 1, 1939, the case having been called and the default of all persons having been entered, judgment of condemnation was entered and the product was ordered destroyed.

M. L. Wilson, *Acting Secretary of Agriculture.*

30900. Misbranding of Dr. David Roberts Uterine Capsules, Dr. David Roberts Worm Powder, Dr. David Roberts Poultry Worm Capsules, Dr. David Roberts Poultry Tonic, Dr. David Roberts Dog Medicines (Blood Tablets, Liver Tablets, Kidney Tablets and Chorea Tablets), and Dr. David Roberts Absorbent. U. S. v. Dr. David Roberts Veterinary Co., Inc., and Dr. David Roberts. Tried to the court. Judgment of guilty. Fines of $1,300 imposed on corporation. Fine of $650 imposed on Dr. David Roberts. Judgment affirmed on appeal. (F. & D. Nos. 38588, 38618, 39769, 39839. Sample Nos. 63254–B, 5204–C, 5206–C, 5207–C, 14696–C, 19567–C, 19568–C, 19569–C, 49101–C, 49106–C, 49110–C, 49113–C, 49115–C.)

The labeling of these veterinary preparations bore false and fraudulent curative and therapeutic claims.

On June 21 and October 25, 1937, and May 9, 1938, the United States attorney for the Eastern District of Wisconsin, acting upon reports by the Secretary of Agriculture, filed in the district court four informations against the Dr. David Roberts Veterinary Co., Inc., Waukesha, Wis., and Dr. David Roberts, alleging shipment by said defendants in violation of the Food and Drugs Act as amended, within the period from on or about January 11, 1936, to on or about January 27, 1937, from the State of Wisconsin into the States of Minnesota and Indiana of quantities of the above-named veterinary preparations which were misbranded.

Analyses of samples showed that the Uterine Capsules consisted chiefly of sucrose, bicarbonate of soda, and ground plant material (corn); that the Worm Powder consisted essentially of cornstarch, boric acid, small proportions of iron oxide, potassium nitrate, rosin, charcoal, sugar, plant material including a nicotine-bearing drug, and anise oil; that the Poultry Worm Capsules consisted essentially of kamala, nicotine, sulfate, and thymol; that the Poultry Tonic consisted essentially of magnesium sulfate, calcium phosphate, bonemeal, sulfur, a fixed oil, iron compound, sodium chloride, and plant material including a nicotine-bearing drug, hominy, and wheat middlings; and that the Absorbent consisted of soap, water, glycerin, and fatty acids.

Analyses of the Dog Medicines showed that the Blood Tablets consisted essentially of sulfur; the Liver Tablets consisted essentially of plant material and a small proportion of calomel, coated with iron oxide and calcium carbonate; the Kidney Tablets consisted essentially of plant material and potassium nitrate, coated with calcium carbonate; and that the Chorea Tablets consisted essentially of extracts of plant drugs and small proportions of potassium bromide and zinc phosphide, coated with calcium carbonate.

The Uterine Capsules were alleged to be misbranded in that certain statements in the labeling regarding their curative and therapeutic effects falsely and fraudulently represented that they were effective as a treatment for slow breeding in cows, and to promote conception; effective as a treatment, remedy, and cure for acid secretions of the genital organs, germs of herd infection, retention of the afterbirth, and abnormal conditions; and effective to prevent acid secretions, to cleanse and soothe the inflamed parts, to serve to improve the breeding condition, to overcome an unnatural discharge, to freshen cows on time, and to cause cows to be with calf.

The Worm Powder was alleged to be misbranded in that certain statements in the labeling falsely and fraudulently represented that it was effective as a treatment, remedy, and cure for roundworms in livestock and bots in horses.

The Poultry Worm Capsules were alleged to be misbranded in that certain statements in the labeling falsely and fraudulently represented that they were effective as a treatment, remedy, and cure for tapeworms and large roundworms in poultry.

The Poultry Tonic was alleged to be misbranded in that certain statements in the labeling falsely and fraudulently represented that it was effective as a poultry tonic and stimulant to the appetite and as a treatment for wormy poultry.

The Absorbent was alleged to be misbranded in that certain statements in the labeling falsely and fraudulently represented that it was effective as an absorbent and effective as a treatment of removable enlargements and in the healing of wounds on livestock and effective as a treatment for old sores, thoroughpin, shoeboils, poll evil, fistulous withers, cold abscess, lameness, and enlarged glands.

The Blood Tablets for dogs were alleged to be misbranded in that certain statements in the labeling falsely and fraudulently represented (in the case of one shipment) that the article was effective as a treatment, remedy, and cure for blood ailments and all forms of skin diseases of dogs; and (in the case of the second shipment,) that it was effective as a treatment, remedy, and cure for blood ailments and all forms of skin diseases; effective as a treatment, remedy, and cure for every dog ailment; effective to prevent and overcome various ailments of dogs; and effective as a treatment for sickness and disease, and as a treatment, remedy, and cure for sore growth or injury, worms, running fits, skin disease, cough, running nose, and matter in the corner of the eyes.

The Liver Tablets for dogs were alleged to be misbranded in that certain statements in the labeling falsely and fraudulently represented (in the case of one shipment) that the article was effective as a treatment, remedy, and cure for liver ailments of dogs, and (in the case of a second shipment) that it was effective as a treatment, remedy, and cure for ailments of the liver; effective for inactive or sleepy condition due to liver trouble; effective as a treatment, remedy, and cure for every dog ailment; effective to prevent and overcome various ailments of dogs, and as a treatment for sickness and disease; and effective as a treatment, remedy, and cure for sore growth or injury, worms, running fits, skin disease, cough, running nose, and matter in the corner of the eyes.

The Kidney Tablets for dogs were alleged to be misbranded in that certain statements in the labeling falsely and fraudulently represented (in the case of one shipment) that the article was effective as a treatment, remedy, and cure for kidney ailments of dogs; and (in the case of a second shipment) that it was effective as a treatment, remedy, and cure for kidney diseases and kidney disorders, and every dog ailment; effective to prevent and overcome various ailments of dogs, and as a treatment for sickness and disease; and effective as a treatment, remedy, and cure for sore growth or injury, worms, running fits, skin disease, cough, running nose, and matter in the corner of the eyes.

The Chorea Tablets for dogs were alleged to be misbranded in that certain statements in the labeling falsely and fraudulently represented (in the case of one shipment) that the article was effective as a treatment, remedy, and cure for chorea of dogs; and (in the case of a second shipment,) that it was effective as a treatment, remedy, and cure for chorea and twitching of the muscles; effective as a treatment, remedy, and cure for every dog ailment; effective to prevent and overcome various ailments of dogs, and as a treatment for sickness and disease; and effective as a treatment, remedy, and cure for sore growth or injury, worms, running fits, skin disease, cough, running nose, and matter in the corner of the eyes.

Pleas of not guilty having been entered on behalf of the defendants, the cases came on for trial before the court without a jury on January 24, 1939. The trial was concluded on January 26, 1939, and resulted in a finding of guilty on all counts of the four informations. Sentence of $1,300 was imposed against the corporation and $650 against Dr. David Roberts. Appeal was perfected and on June 15, 1939, the Circuit Court of Appeals for the Seventh Circuit handed down the following opinion affirming the judgment of the district court:

Before MAJOR and KERNER, *Circuit Judges*, and BARNES, *District Judge*.

Opinion by Kerner. "Appellants, hereafter called defendants, were convicted of violations of the Food and Drugs Act of 1906 (U. S. C. A. 21, Secs. 2 and 10) under four informations involving nine articles, charging interstate shipments of drugs that were alleged to be misbranded, in that the labels, containers, and enclosures of each of the products were false and fraudulent regarding the curative or therapeutic effect of the drugs. The cases were tried by the court, a jury being waived, and resulted in the findings of guilty on all nine counts and the court imposed sentences in the form of fines. Defendants have appealed from these judgments.

"The principal assignment of error and the only one relied upon is that there is an insufficiency of competent evidence to establish guilt beyond a reasonable doubt.

"The informations allege violation of Section 2 of the Food and Drugs Act (Title 21 U. S. C. A. Sec. 2) which makes any person guilty of a misdemeanor who shall ship or deliver for shipment from any State to any other State 'any article of food or drugs which is adulterated or misbranded, within the meaning of Sections 1 to 15 * * *.' The term 'drug' is defined in the act as including 'all medicines and preparations recognized in the United States Pharmacopoeia or National Formulary for internal or external use.' In section 10, an article is defined as misbranded 'if its package or label shall bear or contain any statement, design, or device regarding the curative or therapeutic effect of such article or any of the ingredients or substances contained therein, which is false and fraudulent.'

"The argument is made that before there can be a finding of guilty under this act the Government must prove, not only that the statements made concerning the article were false, but that they were also fraudulent. This is a correct statement of the law. We are therefore called upon to decide whether the statements were false and fraudulent.

"There was evidence that the defendant corporation was engaged in the manufacture and sale of medicines used in the treatment of ailments of dogs, livestock, and poultry, supplying its customers in the States of Minnesota and Missouri with the nine articles mentioned in the informations.

"Since we are of the opinion that the Government introduced evidence at the trial which justified the court in finding, as alleged in the nine counts of the informations, that certain of the statements appearing on the containers and labels regarding the curative or therapeutic effect of the articles were false and fraudulent, it will not be necessary to specifically discuss the evidence relative to each of the nine articles, as that would unduly lengthen this opinion. A discussion of several ought to suffice.

"The brandings complained of are as follows:

Dr. David Roberts Worm Powder

"Regarding this product, there appears on the label and enclosed leaflet the following: 'For Round Worms in Livestock,' 'For Bots In Horses.'

"In support of this count of the information, the Government called five witnesses, four of whom were doctors of Veterinary Medicine and one with a Master's degree from Georgetown University, majoring in zoology with special emphasis on parasitology, who testified in substance that this powder is worthless and has no value against any species of roundworms in livestock and bots in horses, and is not effective as a treatment or cure for worms in livestock or for bots in horses.

Dr. David Roberts Poultry Worm Capsules
For Tapeworms and Large Round Worms in Poultry
Worm Poultry Twice a Year

"Relative to this count, the testimony was in substance that this product was not effective as a treatment for or control of any kind of worm that infests poultry. Three of the doctors testified that they had made extensive critical and controlled tests of these capsules on chickens over a period of 6 weeks, and that at the conclusion of the tests the chickens were autopsied and it was found that the capsules were ineffective in the removal of roundworms or tapeworms.

Dr. David Roberts Dog Medicine

"Four of the counts involved the following dog medicines: Blood tablets, liver tablets, kidney tablets, and chorea tablets, contained in a metal package, holding small tin boxes, one for each dog medicine, sold as a unit. The outside package or box was labeled and carried a large circular, reading thus:

" 'Dr. Roberts Dog Medicines,' 'A Prescription For Every Dog Ailment,' 'Dr. David Roberts' Dog Medicines are Dependable—Try them,' Let Dr. David Roberts advise you about the various ailments of dogs, how to recognize such ailments and diseases by their symptoms, and how to prevent and overcome them in a simple, effective and economical manner right in your own home. Every dog owner can keep his pet reasonably healthy by proper care and feeding, and by administration of proper medicines when sickness or disease occurs. Dr. Roberts has a prescription for every dog ailment. Most of these medicines are conveniently put up in tablet form and easily administered; they have proven their worth and effectiveness for many years. The complete line is given below.' Thereafter are set forth the following products, in the following language: 'Blud Tablets, in case of skin diseases, Chorea Tablets for twitching muscles, Kidney Tablets for Kidney disorders, Liver Tablets for inactive or sleepy condition.'

"The informations charged that these statements, together with the language on the outer container and large circular, were applied to said articles knowingly and in a reckless and wanton disregard of their truth, so as to create in the minds of the purchaser the impression and belief that the articles were effective as a treatment, remedy, or cure for blood ailments, all forms of skin diseases, and all liver and kidney ailments in dogs.

"Dr. John V. LaCroix, a veterinary practitioner, journalist and teacher, testified that for 20 years his practice has been limited to the treatment of dogs: that these blood tablets have no beneficial influence on skin diseases, and are of no value in the treatment of any diseases of the blood; that the liver tablets contain no ingredient having any therapeutic value in connection with the treatment of liver trouble in dogs; that there is no drug or combination of drugs effective as a treatment, remedy, or cure of kidney ailments of dogs in general, and that to prescribe potassium indiscriminately would be harmful in more instances than helpful; and that the elements of calcium carbonate and potassium nitrate are of no assistance in the treatment of kidney ailments in dogs, and that this product has no value in the treatment of any kidney ailment in dogs.

"Dr. Henry E. Moskey, a veterinarian since 1920, in charge of the veterinary section of the Food and Drug Administration, corroborated Dr. LaCroix.

Absorbent

"The language complained of is as follows: 'Absorbent,' 'Apply Absorbent once daily with small brush to lameness,' 'Absorbent—useful in the treatment of removable enlargements and healing of wounds on livestock—old sores—thoroughpin—shoeboils—poll evil—fistulous withers—cold abscess—enlarged glands.'

"In support of this count the testimony disclosed that the product does not contain ingredients which would be effective as a treatment for shoeboils or poll evil; that it has no value in the treatment of enlarged glands; and that no drug or mixture of drugs is known to the profession generally, or agreed upon by the consensus of veterinary opinion, that can do all of the things claimed by this label.

"The record also discloses that the professional witnesses for the Government testified that the opinions expressed by them were in accord with the consensus of veterinary opinion.

"Dr. David Roberts testified that he arrived at the formula for the worm powder by experiments which were successful, and that it was his opinion the powder was effective in the elimination of bots in horses. As he stated it, 'I know that by having tested it out personally by giving it to horses and watching the feces.' He admitted that the powder did not contain ingredients effective as a cure for all forms of worms that infest livestock, and that the capsules were not an effective cure for tapeworms.

"He also testified that the blood tablets did not contain medicinal components effective as a cure for all blood ailments and all forms of skin diseases; that the liver tablets stimulate the liver and were helpful; and that the kidney tablets constituted a remedy, being helpful but not curative.

"Dr. Frederick H. Akin, a practising veterinarian since 1906, testified that the worm powder has two ingredients, both of which he prescribes in the treatment of roundworms, but that he does not use them for bots in horses; that for 32 years he has used kamala, one of the ingredients of the worm capsules in the treatment of chickens, and that the capsule would be effective for tapeworms, but not for large roundworms; that the blood tablet is beneficial, but not a remedy or cure for all diseases of the blood; that the ingredients of the liver tablets are not an effective remedy or cure for all diseases involving a dog's liver; that the ingredients of the kidney tablet have a therapeutic effect in the treatment of kidney troubles; and that the constituent elements of the absorbent are such as are used beneficially in relieving congestion and inflammation, it being his opinion that the absorbent had a remedial effect such as was described on the carton. Neither Dr. Roberts nor Dr. Akin testified that their opinions were in accord with the consensus of veterinary opinion.

"The point is made that a man should not be convicted because he advocates a theory of medicine which has not received the endorsement of the medical profession, and *United States* v. *American Laboratories*, 222 F. 104, is cited. That case is of no help to the defendants. There it was said, p. 106:

"'The broad distinction between things which are frauds and things which are not frauds is clear. It would be difficult, and indeed seems to be impossible, to give a definition of such frauds in words. * * * The essential difference is a fact, and in the administration of the criminal law it is a fact to be found by a jury.

"'* * * There would seem to be no other way of dealing with the subject than to submit to the common sense judgment of a jury to find whether in a given case the acts of a defendant have been honest, however mistaken, or whether they have been false and fraudulent.'

"In the instant case, the question was reduced to one of fact, as distinguished from mere opinion, *Eleven Gross Packages* v. *United States*, 233 F. 71 and *Kar Ru Chemical Co.* v. *United States*, 264 F. 921, and, as defendants' testimony made for conflicting evidence, a question of weighing the evidence was presented. To weigh the evidence is not within the power of this court.

"It is insisted that there was no proof that any of the statements were fraudulently made. In *Seven Cases* v. *United States*, 239 U. S. 510, in speaking of the phrase 'false and fraudulent,' it was said, p. 517: 'This phrase must be taken with its accepted legal meaning, and thus it must be found that the statement contained in the package was put there to accompany the goods with actual intent to deceive,—an intent which may be derived from the facts and circumstances, but which must be established.'

"The owner has a right to give his views regarding the effect of his drugs, *Seven Cases* v. *United States*, *supra*, but he must be mindful that the statute condemns every statement which may mislead or deceive. If an article is not the identical thing that the statement indicates it to be, it is misbranded, *United States v. 95 Barrels of Vinegar*, 265 U. S. 438, and if the drugs are worthless, he cannot escape by hiding behind the phrase the 'doctors say,' *United States* v. *John J. Fulton Co.*, 33 F. (2) 506. Moreover, proof of the false and fraudulent character of any one of the various claims is sufficient, *Goodwin, et al.* v. *United States*, 2 F. (2) 200.

"There can be no doubt that enough was proved to justify an inference that the defendants knew the articles did not possess the curative or therapeutic qualities claimed for them in the statements appearing on the containers and labels, and that the court was justified in holding that they were made with a fraudulent purpose. See *Simpson* v. *United States*, 241 F. 841.

"Defendants assigned as further grounds for error rulings on the admission and exclusion of evidence. Counsel has failed to quote the evidence alleged to have been improperly admitted or excluded, or to present any argument or reason in support of this assignment. We have therefore assumed that it has been waived and we refrain from any special consideration of it.

"Finding no error in the proceeding below, the judgments are

"Affirmed."

M. L. Wilson, *Acting Secretary of Agriculture.*

INDEX TO NOTICES OF JUDGMENT 30876–30900

[1] Contains an opinion of the court.

U. S. GOVERNMENT PRINTING OFFICE: 1940

United States Department of Agriculture

FOOD AND DRUG ADMINISTRATION

NOTICES OF JUDGMENT UNDER THE FOOD AND DRUGS ACT

[Given pursuant to section 4 of the Food and Drugs Act]

30901–30950

FOODS

[Approved by the Acting Secretary of Agriculture, Washington, D. C., January 22, 1940]

30901. Adulteration and misbranding of canned crab meat. U. S. v. 19 Cases and 81 Cases of Seaside Brand Fancy Crab Meat. Decrees of condemnation and forfeiture. Product released under bond for relabeling. (F. & D. Nos. 43409, 43500. Sample Nos. 17929–D, 17930–D.)

Excessive brine was found in sample cans of this product, and the cans were found to contain less than the amount stated upon the label.

On August 26, 1938, the United States attorney for the Northern District of California, acting upon a report by the Secretary of Agriculture, filed in the district court a libel praying seizure and condemnation of 100 cases of canned crab meat at San Francisco, Calif.; alleging that the article had been shipped in interstate commerce on or about June 18, 1938, by the Seaside Clam Co. from Astoria, Oreg.; and charging adulteration and misbranding under the Food and Drugs Act. The article was labeled in part: "Seaside Brand Fancy Crab Meat Net Contents 6½ Oz. Packed by E. C. Dunning for Seaside Clam Co., Seaside, Oregon."

The article was alleged to be adulterated in that brine had been substituted wholly or in part for the article.

The article was alleged to be misbranded in that the statement, "Net Contents 6½ Oz.," was false and misleading and tended to deceive and mislead the purchaser. It was alleged to be misbranded further in that it was food in package form and the quantity of contents was not plainly and conspicuously marked on the outside of the packages, since the quantity stated was incorrect.

On October 6, 1938, E. C. Dunning having appeared as claimant, judgment of condemnation and forfeiture was entered, and the product was released to claimant under bond conditioned that the crab meat should not be sold or otherwise disposed of contrary to law. It was relabeled: "Net Wt. 5¾ Oz. * * * Wet Pack in Salt Water."

GROVER B. HILL, *Acting Secretary of Agriculture.*

30902. Adulteration of buckwheat flour. U. S. v. 20 Bales, each containing 10 5-Pound Bags of Buckwheat Flour (and 3 other seizure actions against buckwheat flour). Default decrees of condemnation and destruction. (F. & D. Nos. 44788, 44789, 44790, 44792. Sample Nos. 32370–D, 32372–D, 32373–D, 32380–D.)

Microscopic examination of samples taken from 3 lots of this product showed the presence of jimsonweed seeds, a deleterious ingredient. Chemical analysis of the remaining lot showed the presence of atropine alkaloids the source of which was probably jimsonweed seeds.

On February 9, 1939, the United States attorney for the Southern District of Illinois, acting upon reports by the Secretary of Agriculture, filed in the district court libels praying seizure and condemnation of 260 5-pound bags and 12 100-pound sacks of buckwheat flour at Peoria and Bloomington, Ill.; alleging that the article had been shipped in interstate commerce within the period from on or about December 7, 1938, to on or about January 12, 1939, by Loughry Bros. Milling & Grain Co. from Monticello, Ind.; and charging adulteration in violation of the Food and Drugs Act. The article was labeled in part: "Pure Buckwheat Flour Monticello Mills."

It was alleged to be adulterated in that it contained added deleterious ingredients which might have rendered it injurious to health.

On July 18 and 26, 1939, no claimant having appeared, judgments of condemnation were entered and the product was ordered destroyed.

GROVER B. HILL, *Acting Secretary of Agriculture.*

30903. **Adulteration and misbranding of egg dyes. U. S. v. 30 Dozen Packages of Egg Dyes (and 2 other seizure actions against the same product). Default decrees of condemnation and destruction.** (F. & D. Nos. 45128, 45129, 45184. Sample Nos. 47272–D, 59742–D, 59743–D.)

These dyes contained lead and one lot also contained arsenic, in amounts which might have rendered them injurious to health.

On April 3 and April 12, 1939, the United States attorneys for the Eastern District of New York, Southern District of New York, and the District of Columbia, acting upon reports by the Secretary of Agriculture, filed in their respective district courts libels praying seizure and condemnation of 30 dozen packages of egg dyes at Brooklyn, N. Y., 75 dozen packages at New York, N. Y., and 18 dozen packages of egg dyes at Washington, D. C.; alleging that the articles had been shipped in interstate commerce by Gypsy Dyes, Inc., from Chicago, Ill., within the period from on or about February 2 to on or about March 14, 1939; and charging adulteration and misbranding in violation of the Food and Drugs Act. The articles were labeled in part: "Made to Comply With the Requirements of the Federal Food and Drugs Act. Gypsy Easter Egg Colors * * * Harmless."

Adulteration was alleged in that the articles contained added poisonous or deleterious ingredients, namely, lead or lead and arsenic, which might have rendered them injurious to health.

Misbranding was alleged in that the statement on the labels, "Made to Comply With the Requirements of the Federal Food and Drugs Act * * * Harmless," was false and misleading and tended to deceive and mislead the purchaser when applied to articles containing lead or arsenic.

On May 3, May 26, and June 5, 1939, no claimant having appeared, judgments of condemnation were entered and the products were ordered destroyed.

GROVER B. HILL, *Acting Secretary of Agriculture.*

30904. **Adulteration of butter. U. S. v. 19 Tubs of Butter. Consent decree of condemnation. Product released under bond to be reworked.** (F. & D. No. 45546. Sample Nos. 55612–D, 55616–D.)

This product contained less than 80 percent of milk fat.

On June 19, 1939, the United States attorney for the Northern District of Illinois, acting upon a report by the Secretary of Agriculture, filed in the district court a libel praying seizure and condemnation of 19 tubs of butter at Chicago, Ill.; alleging that the article had been shipped in interstate commerce on or about June 2, 1939, by Merrick Dairy Co. from Beloit, Wis.; and charging adulteration in violation of the Food and Drugs Act.

The article was alleged to be adulterated in that a product which contained less than 80 percent by weight of milk fat had been substituted for butter, a product which should contain not less than 80 percent of milk fat, as provided by act of March 4, 1923.

On June 27, 1939, Karsten & Sons, Chicago, Ill., claimant, having admitted the allegations of the libel, judgment of condemnation was entered, and the product was ordered released under bond conditioned that it be reworked so that it contain at least 80 percent of milk fat.

GROVER B. HILL, *Acting Secretary of Agriculture.*

30905. **Misbranding of butter. U. S. v. Fulton Butter & Egg Corporation and Julius Cohen. Pleas of guilty. Fine, $400.** (F. & D. No. 42594. Sample No. 16943–D.)

This product was short of the declared weight.

On or about September 27, 1939, the United States attorney for the Southern District of New York, acting upon a report by the Secretary of Agriculture, filed in the district court an information against the Fulton Butter & Egg Corporation, New York, N. Y., and Julius Cohen, alleging shipment by said defendants in violation of the Food and Drugs Act, on or about February 18, 1938, from the State of New York into the State of Virginia, of a quantity of butter which was misbranded.

The article was alleged to be misbranded in that the statements, (box) "60 Lb. Net Weight" and (wrapper enclosing prints) "One Lb. Net," were false and misleading, since the boxes contained less than 60 pounds net weight, and the prints weighed less than 1 pound net.

On September 27, 1939, Julius Cohen entered pleas of guilty for himself and for the corporation, and the court imposed a fine of $200 against each defendant.

GROVER B. HILL, *Acting Secretary of Agriculture.*

30906. Adulteration of butter. U. S. v. Farmers Union Cooperative Creamery Co., Inc. Plea of guilty. Fine, $50 and costs. (F. & D. No. 42730. Sample Nos. 32977–D, 32978–D, 45620–D, 45622–D, 54101–D, 54107–D.)

This product was found to be deficient in milk fat.

On July 27, 1939, the United States attorney for the District of Nebraska, acting upon a report by the Secretary of Agriculture, filed in the district court an information against the Farmers Union Cooperative Creamery Co., Inc., of Superior, Nebr., alleging shipment by said company in violation of the Food and Drugs Act on or about July 29, September 19, and September 27, 1938, from the State of Nebraska into the State of Illinois of quantities of butter which was adulterated.

The article was alleged to be adulterated in that a substance containing less than 80 percent by weight of milk fat had been substituted for butter, a product which should contain not less than 80 percent by weight of milk fat, as prescribed by the act of March 4, 1923.

On September 23, 1939, a plea of guilty was entered and the court assessed a fine of $50 and costs.

GROVER B. HILL, *Acting Secretary of Agriculture.*

30907. Adulteration of frozen fish. U. S. v. 878 Boxes and 131 Boxes of Fish. One lot released under bond for segregation and destruction of unfit portion. Remaining lot condemned and ordered destroyed. (F. & D. Nos. 45361, 45428. Sample Nos. 62699–D, 65237–D.)

This product had been shipped in interstate commerce and remained unsold in the original packages. At the time of examination it was found to be in whole or in part decomposed.

On or about May 27 and June 7, 1939, the United States attorneys for the Northern District of Texas and the Southern District of Ohio, acting upon reports by the Secretary of Agriculture, filed in their respective district courts libels (the former amended June 30, 1939) praying seizure and condemnation of 878 boxes of frozen fish at Dallas, Tex., and 131 boxes of frozen fish at Columbus, Ohio; alleging that the article had been shipped on or about April 22 and May 4, 1939, by the Booth Fisheries Corporation from Boston, Mass.; and charging adulteration in violation of the Food and Drugs Act. The article was labeled in part: "Booth Tasty Loins [or "Twin Tasty Loins"] * * * Booth Sea Foods."

It was alleged to be adulterated in that it consisted in whole or in part of a decomposed animal substance.

On July 5, 1939, Booth Fisheries Corporation having appeared as claimant for the lot seized at Dallas, Tex., a decree was entered ordering release of the product under bond conditioned that it be reexamined, that all fish found to be unfit for human consumption be destroyed, and the remainder, if any, be released. On November 21, 1939, no claimant having appeared for the lot seized at Columbus, Ohio, judgment of condemnation was entered and the product was ordered destroyed.

GROVER B. HILL, *Acting Secretary of Agriculture.*

30908. Adulteration of flour. U. S. v. 58 Bags and 35 Bags of Flour. Consent decree of condemnation. Product taken down under bond for denaturing and for use as feed for hogs. (F. & D. Nos. 45356, 45357. Sample Nos. 43700–D, 43701–D.)

This product had been shipped in interstate commerce and remained unsold and in the original packages. At the time of examination it was found to be infested with insects.

On May 23, 1939, the United States attorney for the Northern District of California, acting upon a report by the Secretary of Agriculture, filed in the district court a libel combining the two causes of action and praying seizure and condemnation of 93 bags of flour at San Francisco, Calif.; alleging that the article had been shipped on or about December 23, 1937, and February 11, 1938, respectively, by Houser & Son from Portland, Oreg.; and charging adulteration in violation of the Food and Drugs Act. The article was labeled in part, "The Master Baker."

Adulteration of the product was alleged in that it consisted wholly or in part of a filthy vegetable substance.

On August 3, 1939, the claimant having consented to the entry of a decree, judgment of condemnation was entered and the product was taken down under bond for denaturing and for use as feed for hogs.

GROVER B. HILL, *Acting Secretary of Agriculture.*

30909. Adulteration of canned salmon. U. S. v. Andrew S. Day (North Pacific Sea Foods). Plea of guilty. Fine, $100. (F. & D. No. 42666. Sample Nos. 40226–D, 40259–D, 40260–D, 40289–D, 40319–D, 40367–D, 40393–D, 40403–D, 40418–D, 40534–D, 40536–D, 40606–D, 40607–D, 40637–D, 50833–D, 50834–D, 50835–D, 50847–D.)

This product was in whole or in part decomposed.

On March 20, 1939, the United States attorney for the Third Division of the District of Alaska, acting upon a report by the Secretary of Agriculture, filed in the district court an information against Andrew S. Day, trading as North Pacific Sea Foods at Dayville (near Valdez), Alaska, alleging shipment by said defendant in violation of the Food and Drugs Act, within the period from on or about July 16 to on or about September 13, 1938, from the Territory of Alaska into the State of Washington of quantities of canned salmon which was adulterated.

The article was alleged to be adulterated in that it consisted in whole and in part of a decomposed animal substance.

On October 7, 1939, the defendant entered a plea of guilty and the court imposed a fine of $100.

GROVER B. HILL, *Acting Secretary of Agriculture.*

30910. Adulteration of frozen whole eggs. U. S. v. Armour & Co. (Armour Creameries). Plea of guilty. Fine, $200 and costs. (F. & D. No. 42742. Sample Nos. 12132–D, 12133–D.)

Samples of this product were found to be decomposed and musty.

On August 21, 1939, the United States attorney for the Western District of Kentucky, acting upon a report by the Secretary of Agriculture, filed in the district court an information against Armour & Co., trading as Armour Creameries at Louisville, Ky., alleging shipment by said defendant in violation of the Food and Drugs Act on or about November 10, 1938, from the State of Kentucky into the State of New Jersey of a quantity of frozen eggs which were adulterated.

The article was alleged to be adulterated in that it consisted in whole or in part of a decomposed animal substance.

On October 9, 1939, the defendant entered a plea of guilty and the court imposed a fine of $200 and costs.

GROVER B. HILL, *Acting Secretary of Agriculture.*

30911. Adulteration of frozen fish. U. S. v. 400 Boxes of Ocean Perch. Consent decree of condemnation. Product ordered converted into fertilizer. (F. & D. No. 45140. Sample No. 54670–D.)

This product was infested with parasitic worms.

On April 11, 1939, the United States attorney for the Northern District of Illinois, acting upon a report by the Secretary of Agriculture, filed in the district court a libel praying seizure and condemnation of 400 boxes of ocean perch at Chicago, Ill.; alleging that the article had been shipped in interstate commerce on or about March 21, 1939, by the Cape Ann Cold Storage Co. from Gloucester, Mass.; and charging adulteration in violation of the Food and Drugs Act. The article was labeled in part: "Cape Ann Ocean Perch."

Adulteration was alleged in that the article consisted wholly or in part of a filthy animal substance.

On May 31, 1939, the consignee having consented to the entry of a decree, judgment of condemnation was entered and the product was ordered disposed of for fertilizer.

GROVER B. HILL, *Acting Secretary of Agriculture.*

30912. Misbranding of canned peas. U. S. v. 27, 84, and 29 Cases of Canned Peas. Default decrees of condemnation. Product delivered to charitable institutions. (F. & D. Nos. 45562, 45563, 45564. Sample Nos. 66222–D, 66223–D, 66224–D.)

This product was substandard because the peas were not immature, more than 25 percent being ruptured, and it was not labeled to indicate that it was substandard.

On September 13, 1939, the United States attorney for the Southern District of Georgia, acting upon a report by the Secretary of Agriculture, filed in the district court libels praying seizure and condemnation of 140 cases of canned peas at Savannah, Ga.; alleging that the article had been shipped in interstate commerce on or about July 19, 1939, by the H. J. McGrath Co. from Baltimore, Md.; and charging misbranding in violation of the Food and Drugs Act. The article was labeled in part: "Merlosa Brand Early June Peas."

It was alleged to be misbranded in that it was canned food and fell below the standard of quality and condition promulgated by the Secretary of Agriculture for such canned food, since the peas were not immature and the package or label did not bear a plain and conspicuous statement prescribed by the Secretary indicating that it fell below such standard.

On October 17, 1939, no claimant having appeared, judgments of condemnation were entered and the product was ordered delivered to charitable institutions.

GROVER B. HILL, *Acting Secretary of Agriculture.*

30913. Adulteration of smoked herring. U. S. v. 84 Boxes and 134 Boxes of Cured Kippers. Default decree of condemnation and destruction. (F. & D. Nos. 44846, 44847. Sample Nos. 59761–D, 59762–D.)

This product had been shipped in interstate commerce and remained unsold and in the original packages. At the time of examination it was in part decomposed.

On February 15, 1939, the United States attorney for the Eastern District of New York, acting upon a report by the Secretary of Agriculture, filed in the district court a libel praying seizure and condemnation of 218 boxes of smoked herring at Brooklyn, N. Y.; alleging that the article had been shipped on or about November 8, 1938, by Green Bros. from Eastport, Maine; and charging adulteration in violation of the Food and Drugs Act. The article was labeled in part: "Triboro Brands Best English Cured Kippers Oak Smoked."

It was alleged to be adulterated in that it consisted in part of a filthy animal substance, namely, decomposed fish.

On April 4, 1939, no claimant having appeared, judgment of condemnation was entered and the product was ordered destroyed.

GROVER B. HILL, *Acting Secretary of Agriculture.*

30914. Adulteration of frozen fish. U. S. v. 450 Boxes of Perch Fillets. Default decree of condemnation and destruction. (F. & D. No. 45533. Sample No. 54821–D.)

This product had been shipped in interstate commerce and remained unsold and in the original packages. At the time of examination it was found to be in whole or in part decomposed.

On June 26, 1939, the United States attorney for the Northern District of Illinois, acting upon a report by the Secretary of Agriculture, filed in the district court a libel praying seizure and condemnation of 450 boxes of perch fillets at Chicago, Ill.; alleging that the article had been shipped by Slade Gorton Co. from Gloucester, Mass., on or about June 9, 1939; and charging adulteration in violation of the Food and Drugs Act. The article was labeled in part: "Frozen Ocean Perch Fillets."

It was alleged to be adulterated in that it consisted wholly or in part of a decomposed animal substance.

On September 2, 1939, no claimant having appeared, judgment of condemnation was entered and the product was ordered converted into fertilizer.

GROVER B. HILL, *Acting Secretary of Agriculture.*

30915. Adulteration of butter. U. S. v. Fairmont Creamery Co. Plea of nolo contendere. Fine, $100 and costs. (F. & D. No. 42774. Sample No. 60636–D.)

This product contained less than 80 percent of milk fat.

On October 23, 1939, the United States attorney for the Western District of Pennsylvania, acting upon a report by the Secretary of Agriculture, filed in the district court an information against the Fairmont Creamery Co., a corporation having a place of business at Pittsburgh, Pa., alleging shipment by said company on or about May 22, 1939, from the State of Pennsylvania into the State of New York, of a quantity of butter which was adulterated in violation of the Food and Drugs Act.

The article was alleged to be adulterated in that a product which contained less than 80 percent by weight of milk fat had been substituted for butter, a product which should contain not less than 80 percent by weight of milk fat, as prescribed by act of March 4, 1923.

On November 28, 1939, a plea of nolo contendere having been entered on behalf of the defendant, the court imposed a fine of $100 and costs.

GROVER B. HILL, *Acting Secretary of Agriculture.*

30916. Adulteration of butter. U. S. v. Deer Creek Creamery Co. Plea of guilty. Fine, $50. (F. & D. No. 42751. Sample Nos. 54150–D, 54155–D, 54157–D.)

This product contained less than 80 percent of milk fat.

On September 2, 1939, the United States attorney for the District of Kansas, acting upon a report by the Secretary of Agriculture, filed in the district court an information against Deer Creek Creamery Co., a corporation, Atchison, Kans., alleging shipment by said defendant in violation of the Food and Drugs Act, within the period from on or about August 24 to August 27, 1938, from the State of Kansas into the State of Illinois of quantities of butter which was adulterated.

The article was alleged to be adulterated in that a product which contained less than 80 percent by weight of milk fat had been substituted for butter, a product which should contain not less than 80 percent by weight of milk fat, as prescribed by act of March 4, 1923.

On October 6, 1939, a plea of guilty was entered on behalf of the defendant and the court imposed a fine of $50.

GROVER B. HILL, *Acting Secretary of Agriculture.*

30917. Adulteration and misbranding of canned herring roe. U. S. v. 137 Cases of Herring Roe. Default decree of condemnation and destruction. (F. & D. No. 44894. Sample No. 35010–D.)

This product contained worms, visceral organs, scales, and bone fragments and was in part decomposed. Moreover, it was falsely branded as to the State in which it was manufactured or produced.

On Februry 24, 1939, the United States attorney for the Eastern District of Virginia, acting upon a report by the Secretary of Agriculture, filed in the district court a libel praying seizure and condemnation of 137 cases of herring roe at Norfolk, Va.; alleging that the article had been shipped in interstate commerce on or about October 29, 1938, by B. A. Griffin from Eastport, Maine; and charging adulteration and misbranding in violation of the Food and Drugs Act. The article was labeled in part: "Thomas Brand Herring Roe."

It was alleged to be adulterated in that it consisted in whole or in part of a filthy and decomposed animal substance.

It was alleged to be misbranded in that the statement on the can label, "Selected and Packed by Hand on the Fishing Shore at Weems, Va. By S. O. Thomas," was false and misleading and tended to deceive and mislead the purchaser when applied to an article that was not manufactured or produced in Virginia.

On May 23, 1939, no claimant having appeared, judgment of condemnation was entered and the product was ordered destroyed.

GROVER B. HILL, *Acting Secretary of Agriculture.*

30918. Adulteration of butter. U. S. v. Ravenwood Cooperative Creamery, Inc. Plea of guilty. Fine, $25. (F. & D. No. 42708. Sample No. 32975–D.)

This product contained less than 80 percent by weight of milk fat.

On July 12, 1939, the United States attorney for the Western District of Missouri, acting upon a report by the Secretary of Agriculture, filed in the district court an information against the Ravenwood Cooperative Creamery, Inc., Ravenwood, Mo., alleging shipment by said defendant in violation of the Food and Drugs Act on or about August 25, 1938, from the State of Missouri into the State of Illinois, of a quantity of butter which was adulterated.

The article was alleged to be adulterated in that a product which contained less than 80 percent by weight of milk fat had been substituted for butter, a product which should contain not less than 80 percent by weight of milk fat, as prescribed by the act of March 4, 1923.

On August 30, 1939, a plea of guilty having been entered on behalf of the defendant, the court imposed a fine of $25.

GROVER B. HILL, *Acting Secretary of Agriculture.*

30919. Adulteration of canned oysters. U. S. v. 34 Cartons of Oysters (and 3 other seizure actions against canned oysters). Default decrees of condemnation and destruction. (F. & D. Nos. 44990 to 44998, inclusive. Sample No. 37665–D.)

This product contained sharp pieces of shell which were small enough to be swallowed, and which were sharp and capable of inflicting injury.

On March 10, 1939, the United States attorney for the Western District of Tennessee, acting upon a report by the Secretary of Agriculture, filed in the district court libels praying seizure and condemnation of 34 cartons of canned

oysters at Paris, Tenn., 114 cartons at McKenzie, Tenn., 189 cartons at Union City, Tenn., and 197 cartons at Martin, Tenn.; alleging that the article had been shipped in interstate commerce on or about January 14, 1939, by Gibbs & Co., Inc., from Biloxi, Miss., to Paducah, Ky., thence to the towns and cities aforesaid; and charging adulteration in violation of the Food and Drugs Act. The article was labeled in part: "Bull Head Brand Oysters, Gibbs & Co., Inc., Distributors, Baltimore, Md."

It was alleged to be adulterated in that shell fragments had been mixed and packed with it so as to reduce and lower its quality, and had been substituted wholly or in part for oysters; and in that it contained an added deleterious ingredient, oyster shell fragments, which might have rendered it injurious to health.

On March 25, 1939, the Mavar Shrimp & Oyster Co. Ltd., Biloxi, Miss., having appeared and filed a motion that it be allowed to take samples for reexamination so as to determine whether they could be salvaged, it was ordered that the claimant be permitted to take such samples, also that the Government might take similar samples. On September 6, 1939, no answer or defense to the libels having been made, judgments of condemnation were entered and the product was ordered destroyed.

GROVER B. HILL, *Acting Secretary of Agriculture.*

30920. Misbranding of peanut butter. U. S. v. Texas Peanut Products Co., Inc. Plea of guilty. Fine, $80. (F. & D. No. 42746. Sample Nos. 36898–D, 36901–D, 36902–D, 36903–D.)

This product was short weight.

On October 11, 1939, the United States attorney for the Southern District of Texas, acting upon a report by the Secretary of Agriculture, filed in the district court an information against the Texas Peanut Products Co., Inc., Houston, Tex., alleging shipment by said defendant in violation of the Food and Drugs Act as amended, within the period from on or about October 24, 1938, to on or about January 18, 1939, from the State of Texas into the State of Oklahoma, of quantities of peanut butter which was misbranded. Portions were labeled in part: (Jars) "Dandy Boy Brand [or "Everbest"] Peanut Butter * * * Texas Peanut Products Co." The remainder was labeled in part: "Huck Finn Brand Peanut Butter * * * Packed For Huck Finn Products Co. Houston, Texas."

The article was alleged to be misbranded in that the statements, "Net Wt. 32 Oz.," "Contents 24 Oz.," "Net Weight 24 Oz.," and "Net Weight 40 Oz.," borne on the jars, were false and misleading and were borne on said jars so as to deceive and mislead the purchaser, since the jars contained less than the amount stated. Further misbranding was alleged in that the article was food in package form and the quantity of the contents was not plainly and conspicuously marked on the outside of the packages.

On November 9, 1939, a plea of guilty was entered on behalf of the defendant and the court imposed a fine of $80.

GROVER B. HILL, *Acting Secretary of Agriculture.*

30921. Adulteration of maple sirup. U. S. v. 61 Drums of Maple Sirup (and 1 other seizure action against maple sirup). Product ordered released under bond to be deleaded. (F. & D. Nos. 45522, 45534, 45535, 45536. Sample Nos. 68990–D to 68993–D, inclusive.)

This product contained lead.

On June 27 and July 5, 1939, the United States attorney for the District of Vermont, acting upon reports by the Secretary of Agriculture, filed in the district court libels praying seizure and condemnation of 247 drums of maple sirup at Burlington, Vt.; alleging that the article had been shipped by United Maple Products, Ltd., from Morrissette, Quebec, Canada, on or about June 8, 1939; and charging adulteration in violation of the Food and Drugs Act.

The article was alleged to be adulterated in that it contained an added poisonous or deleterious ingredient, lead, which might have rendered it injurious to health.

On July 6 and 7, 1939, decrees were entered ordering that the product be released to the claimant upon the execution of a bond conditioned that it be deleaded under the supervision of this Department.

GROVER B. HILL, *Acting Secretary of Agriculture.*

30922. **Misbranding of canned peas. U. S. v. 98 Cases of Canned Peas. Consent decree of condemnation and forfeiture. Product released under bond conditioned that the peas be relabeled.** (F. & D. No. 45561. Sample No. 61081–D.)

This product was substandard because the peas were not immature, and it was not labeled to indicate that it was substandard.

On September 11, 1939, the United States attorney for the Eastern District of Louisiana, acting upon a report by the Secretary of Agriculture, filed in the district court a libel praying seizure and condemnation of 98 cases of canned peas at New Orleans, La.; alleging that the article had been shipped in interstate commerce from Baltimore, Md., on or about June 12, 20, and 26, 1939, by Lord-Mott Co.; and charging misbranding in violation of the Food and Drugs Act. It was labeled in part: "Cottage Brand Early June Peas."

The article was alleged to be misbranded in that it was canned food and fell below the standard of quality and condition promulgated by the Secretary of Agriculture, since the peas were not immature and the label did not bear a plain and conspicuous statement prescribed by regulations of this Department indicating that it fell below such standard.

On October 20, 1939, Lord-Mott Co., claimant, having admitted the allegations of the libel, judgment of condemnation and forfeiture was entered and the product was ordered released under bond for relabeling.

GROVER B. HILL, *Acting Secretary of Agriculture.*

30923. **Adulteration of red perch fillets. U. S. v. 258 Boxes of Red Perch Fillets. Default decree of condemnation and destruction.** (F. & D. No. 45484. Sample No. 65258–D.)

This product was infested with parasitic worms.

On June 13, 1939, the United States attorney for the Southern District of Indiana, acting upon a report by the Secretary of Agriculture, filed in the district court a libel praying seizure and condemnation of 258 boxes of red perch fillets at Indianapolis, Ind.; alleging that the article had been shipped in interstate commerce on or about May 26, 1939, by R. O'Brien & Co. from Boston, Mass.; and charging adulteration in violation of the Food and Drugs Act.

Adulteration was alleged in that the article consisted wholly or in part of a filthy animal substance.

On July 26, 1939, no claimant having appeared, judgment of condemnation was entered and the product was ordered destroyed.

GROVER B. HILL, *Acting Secretary of Agriculture.*

30924. **Adulteration of candy. U. S. v. Metro Chocolate Co., Inc. Plea of guilty. Fine, $400.** (F. & D. No. 42714. Sample Nos. 14623–D, 30196–D.)

Samples of this product were found to contain insect and worm excreta and other filth.

On June 23, 1939, the United States attorney for the Eastern District of New York, acting upon a report by the Secretary of Agriculture, filed in the district court an information against the Metro Chocolate Co., Inc., Brooklyn, N. Y., alleging shipment by said company on or about June 16 and November 4, 1938, from the State of New York into the States of Massachusetts and New Jersey of quantities of candies which were adulterated. The articles were labeled in part: "Metro Milky Caramels" or "Metro Cocoanut Fancies."

Adulteration was alleged in that the article consisted in whole or in part of a filthy vegetable substance.

On July 21, 1939, a plea of guilty having been entered on behalf of the defendant, the court imposed a fine of $400.

GROVER B. HILL, *Acting Secretary of Agriculture.*

30925. **Adulteration of butter. U. S. v. Cecil E. Romine, Joe B. Romine, George W. Romine, and Kelsie R. Romine (Romine's Creamery Co.). Pleas of guilty. Fine, $25.** (F. & D. No. 42724. Sample No. 54116–D.)

This product contained less than 80 percent by weight of milk fat.

On July 6, 1939, the United States attorney for the District of Kansas, acting upon a report by the Secretary of Agriculture, filed in the district court an information against the above-named defendants, alleging shipment by them on or about January 5, 1939, from the State of Kansas into the State of Illinois of a quantity of butter which was adulterated.

Adulteration was alleged in that a product which contained less than 80 percent by weight of milk fat had been substituted for butter, a product which

should contain not less than 80 percent by weight of milk fat, as prescribed by the act of March 4, 1923.

On July 28, 1939, pleas of guilty having been entered by the defendants, the court imposed a fine of $25 to cover all defendants.

GROVER B. HILL, *Acting Secretary of Agriculture.*

30926. Misbranding of canned peas. U. S. v. 42 Cases of Canned Peas. Default decree entered ordering product delivered to charitable institutions. (F. & D. No. 45555. Sample No. 67637–D.)

This product fell below the standard established by this Department because the peas were not immature, and it was not labeled to indicate that it was substandard.

On or about August 28, 1939, the United States attorney for the District of Connecticut, acting upon a report by the Secretary of Agriculture, filed in the district court a libel praying seizure and condemnation of 42 cases of canned peas at New Britain, Conn.; alleging that the article had been shipped in interstate commerce on or about August 1, 1939, by Bruder & Zweil, Inc., from Providence, R. I.; and charging misbranding in violation of the Food and Drugs Act. The article was labeled in part: "Admiration Selected Early June Peas * * * Edwin Smithson Company Incorporated Distributors New York."

It was alleged to be misbranded in that it was canned food and fell below the standard of quality and condition promulgated by the Secretary of Agriculture since the peas were not immature, and its package or label did not bear a plain and conspicuous statement indicating that it fell below such standard.

On November 20, 1939, no claimant having appeared, judgment was entered ordering that the product be distributed to charitable institutions, and that the containers be destroyed.

GROVER B. HILL, *Acting Secretary of Agriculture.*

30927. Adulteration of Limburger type cheese. U. S. v. 100 Cartons of Smith's Limburger Type Cheese (and 8 other seizure actions against Limburger type cheese). Default decrees of condemnation and destruction. (F. & D. Nos. 44584 to 44592, inclusive. Sample Nos. 27197–D, 27198–D, 27199–D, 59321–D, 59322–D, 59325–D, 59326–D, 59327–D, 59328–D.)

This product had been shipped in interstate commerce and remained unsold and in the original packages. At the time of examination it was found to contain insect fragments.

On December 28, 1938, the United States attorney for the Middle District of Pennsylvania, acting upon a report by the Secretary of Agriculture, filed in the district court libels praying seizure and condemnation of 312 cartons, 199 boxes, 233 cases, and 14 bundles of Limburger type cheese at Scranton, Pa.; alleging that the article had been shipped within the period from July 1, 1938, to on or about November 2, 1938, by J. & H. Van Vleck from Westernville, N. Y.; and charging adulteration in violation of the Food and Drugs Act. The article was labeled in part: (Units) "Smith's Limburger Type Cheese Made in America. G. Smith and Sons Incorporated, Seelyville, Pa."

It was alleged to be adulterated in that it consisted wholly or in part of a filthy animal substance.

On August 4, 1939, no claimant having appeared, judgments of condemnation were entered and the product was ordered destroyed.

GROVER B. HILL, *Acting Secretary of Agriculture.*

30928. Misbranding of canned tomatoes. U. S. v. 496 Cases of Tomatoes. Consent decree of condemnation. Product released under bond to be relabeled. (F. & D. No. 45569. Sample No. 82050–D.)

This product fell below the standard established by this Department because it was not normally colored and it was not labeled to indicate that it was substandard.

On October 16, 1939, the United States attorney for the Western District of Oklahoma, acting upon a report by the Secretary of Agriculture, filed in the district court a libel praying seizure and condemnation of 496 cases of canned tomatoes at Oklahoma City, Okla.; alleging that the article had been shipped in interstate commerce on or about September 21 and 22, 1939, by Nelson Canning Co. from Springdale, Ark.; and charging misbranding in violation of the Food and Drugs Act. The article was labeled in part: "Nelson's Hand Packed Tomatoes."

It was alleged to be misbranded in that it was canned food and fell below the standard of quality and condition promulgated by the Secretary of Agriculture for such canned food since it was not normally colored, and the label on the cans did not bear a plain and conspicuous statement, as prescribed by the Secretary indicating that it fell below such standard.

On November 6, 1939, Nelson Canning Co., claimant, having admitted the allegations of the libel, judgment of condemnation was entered, and the product was ordered released under bond conditioned that it be relabeled under the supervision of this Department.

GROVER B. HILL, *Acting Secretary of Agriculture.*

30929. Misbranding of canned red sour pitted cherries. U. S. v. 235 Cases of Canned Cherries. Consent decree of condemnation. Product released under bond to be relabeled. (F. & D. No. 44751. Sample No. 43606–D.)

This product was substandard because of the presence of excessive pits, and it was not labeled to indicate that it was substandard.

On January 27, 1939, the United States attorney for the Southern District of California filed a libel against 235 cases of canned cherries at Fresno, Calif.; alleging that the article had been shipped in interstate commerce on or about August 17, 1938, by Stayton Canning Co. from West Stayton, Oreg.; and charging that it was misbranded. The article was labeled in part: "Mountain Home Brand * * * Haas Brothers Distributors."

The article was alleged to be misbranded in that it was canned food and fell below the standard of quality and condition promulgated by the Secretary of Agriculture, and its package or label did not bear a plain and conspicuous statement prescribed by regulation of this Department indicating that it fell below such standard.

On September 5, 1939, Stayton Canning Co., claimant, having admitted the allegations of the libel, judgment of condemnation was entered, and the product was ordered released under bond conditioned that it be relabeled in compliance with the law.

GROVER B. HILL, *Acting Secretary of Agriculture.*

30930. Adulteration of butter. U. S. v. Brooklawn Creamery Co. Plea of guilty. Fine, $26. (F. & D. No. 42757. Sample Nos. 57613–D, 57649–D.)

This product contained less than 80 percent of milk fat.

On August 28, 1939, the United States attorney for the District of Utah, acting upon a report by the Secretary of Agriculture, filed in the district court an information against the Brooklawn Creamery Co., a corporation, Beaver, Utah, alleging shipment by said defendant in violation of the Food and Drugs Act on or about March 17 and May 2, 1939, from the State of Utah into the State of California, of quantities of butter which was adulterated.

The article was alleged to be adulterated in that a product which contained less than 80 percent by weight of milk fat had been substituted for butter, a product which should contain not less than 80 percent by weight of milk fat, as prescribed by the act of March 4, 1923.

On October 11, 1939, the defendant entered a plea of guilty, and the court imposed a fine of $25 on the first count and $1 on the second count.

GROVER B. HILL, *Acting Secretary of Agriculture.*

30931. Adulteration of butter. U. S. v. North Platte Valley Non-Stock Cooperative Cheese Co. Plea of guilty. Fine, $25 and costs. (F. & D. No. 42761. Sample Nos. 41292–D, 41293–D, 41297–D, 41298–D.)

This product contained less than 80 percent of milk fat.

On October 2, 1939, the United States attorney for the District of Nebraska, acting upon a report by the Secretary of Agriculture, filed an information against the North Platte Valley Non-Stock Cooperative Cheese Co., a corporation, Gering, Nebr., alleging shipment by said company on or about May 10 and May 18, 1939, from the State of Nebraska into the State of Wyoming of quantities of butter which was adulterated. The article was labeled in part: "Beauty Girl Quality Butter."

It was alleged to be adulterated in that a product which contained less than 80 percent by weight of milk fat had been substituted for butter.

On October 17, 1939, a plea of guilty was entered on behalf of the defendant and the court imposed a fine of $25 and costs.

GROVER B. HILL, *Acting Secretary of Agriculture.*

30932. Adulteration of butter. U. S. v. 40 Tubs of Butter. Consent decree of condemnation. Product released under bond to be reworked. (F. & D. No. 45285. Sample No. 54157–D.)

This product contained less than 80 percent by weight of milk fat.

On April 15, 1939, the United States attorney for the Northern District of Illinois, acting upon a report by the Secretary of Agriculture, filed in the district court a libel praying seizure and condemnation of 40 tubs of butter at Chicago, Ill.; alleging that the article had been shipped in interstate commerce on or about August 25, 1938, by the Deer Creek Creamery Co., from Atchison, Kans.; and charging adulteration in violation of the Food and Drugs Act.

The article was alleged to be adulterated in that a product containing less than 80 percent by weight of milk fat had been substituted for butter, a product which should contain not less than 80 percent of milk fat, as provided by the act of March 4, 1923.

On May 2, 1939, the Deer Creek Creamery Co., claimant, having admitted the allegations of the libel and having consented to the entry of a decree, judgment of condemnation was entered and the product was ordered released under bond conditioned that it be reworked so that it comply with the law.

GROVER B. HILL, *Acting Secretary of Agriculture.*

30933. Misbranding of canned peas. U. S. v. 49 Cases of Peas. Default decree of condemnation and destruction. (F. & D. No. 45558. Sample No. 13740–D.)

This product was substandard because the peas were not immature, and it was not labeled to indicate that it was substandard.

On September 1, 1939, the United States attorney for the Southern District of Georgia, acting upon a report by the Secretary of Agriculture, filed in the district court a libel praying seizure and condemnation of 49 cases of canned peas at Savannah, Ga.; alleging that the article had been shipped in interstate commerce on or about July 28, 1939, by C. C. Lang & Son, Inc., from Baltimore, Md.; and charging misbranding in violation of the Food and Drugs Act. The article was labeled in part: "Merlosa Brand Early June Peas * * * The H. J. McGrath Co., Baltimore, Md., Distributors."

It was alleged to be misbranded in that it was canned food and fell below the standard of quality and condition promulgated by the Secretary of Agriculture, since the peas were not immature and its package or label did not bear a plain and conspicuous statement prescribed by regulation of this Department indicating that it fell below such standard.

On September 25, 1939, no claimant having appeared, judgment of condemnation was entered and the product was ordered destroyed.

GROVER B. HILL, *Acting Secretary of Agriculture.*

30934. Adulteration of candy. U. S. v. 3½ Boxes and 18 Cartons of Candy. Default decree of condemnation and destruction. (F. & D. Nos. 43152, 43153. Sample Nos. 37624–D, 37625–D.)

This product had been shipped in interstate commerce and remained unsold and in the original packages. At the time of examination it was found to be insect-infested.

On or about August 1, 1939, the United States attorney for the Northern District of Mississippi, acting upon a report by the Secretary of Agriculture, filed in the district court a libel praying seizure and condemnation of 3½ boxes and 18 cartons of candy at Tupelo, Miss.; alleging that the article had been shipped within the period from on or about November 2, 1937, to on or about May 9, 1938, by Mars, Inc., from Chicago, Ill.; and charging adulteration in violation of the Food and Drugs Act. The article was labeled in part: "Two Bits 5¢" or "Snickers 5¢."

It was alleged to be adulterated in that it consisted wholly or in part of a filthy vegetable substance.

On October 6, 1939, no claimant having appeared, judgment of condemnation was entered and the product was ordered destroyed.

GROVER B. HILL, *Acting Secretary of Agriculture.*

30935. Adulteration of whitefish roe. U. S. v. Rawley Fish Co. Plea of guilty. Fine, $75. (F. & D. No. 42756. Sample Nos. 26599–D, 59829–D.)

This product contained parasitic worms, and samples taken from one of the shipments also were found to contain fish scales and nondescript tissue fragments.

On August 31, 1939, the United States attorney for the Eastern District of Wsconsin, acting upon a report by the Secretary of Agriculture, filed in the district court an information against Rawley Fish Co., a corporation, Two Rivers, Wis., alleging shipment by said company in violation of the Food and Drugs Act, on or about February 15 and 18, 1939, from the State of Wisconsin into the State of New York, of quantities of fish roe which was adulterated.

One shipment was alleged to be adulterated in that it consisted in whole or in part of a filthy animal substance, namely, fish roe containing parasitic worms, fish scales, and nondescript tissue fragments, and in that it consisted of portions of an animal unfit for food, namely, fish scales. The remaining shipment was alleged to be adulterated in that it consisted in whole or in part of a filthy animal substance, namely, fish roe containing parasitic worms.

On September 22, 1939, a plea of guilty was entered on behalf of the defendant and the court imposed a fine of $75.

GROVER B. HILL, *Acting Secretary of Agriculture.*

30936. Adulteration of butter. U. S. v. Farmers Union Cooperative Creamery Co., Inc. Plea of guilty. Fine, $50 and costs. (F. & D. No. 42765. Sample No. 54181–D.)

Examination of samples of this product showed a deficiency in milk fat.

On October 2, 1939, the United States attorney for the District of Nebraska, acting upon a report by the Secretary of Agriculture, filed in the district court an information against Farmers Union Cooperative Creamery Co., Inc., Aurora, Nebr., alleging shipment by it in violation of the Food and Drugs Act on or about August 1, 1938, from Aurora, Nebr., into the State of Illinois of a quantity of butter which was adulterated.

The product was alleged to be adulterated in that a substance containing less than 80 percent by weight of milk fat had been substituted for butter, a product which should contain not less than 80 percent by weight of milk fat, as prescribed by the act of March 4, 1923.

On October 28, 1939, a plea of guilty was entered and the court imposed a fine of $50 and costs.

GROVER B. HILL, *Acting Secretary of Agriculture.*

30937. Adulteration of frozen fish. U. S. v. 209 Cartons of Birdseye Red Perch Fillets. Default decree of condemnation, forfeiture, and destruction. (F. & D. No. 45364. Sample No. 65223–D.)

This product was shipped in interstate commerce, and at the time of sampling was in the original packages. Examination showed the presence of decomposed fish.

On May 19, 1939, the United States attorney for the Southern District of Indiana, acting upon a report by the Secretary of Agriculture, filed in the district court an information against 209 cartons of Birdseye Red Perch Fillets at Indianapolis, Ind.; alleging that the article had been shipped on or about April 29, 1939, by Frosted Foods Sales Corporation from Boston, Mass.; and charging adulteration in violation of the Food and Drugs Act.

The product was alleged to be adulterated in that it consisted in whole or in part of a decomposed animal substance.

On November 7, 1939, no claimant having appeared, a decree of condemnation, forfeiture, and destruction was entered.

GROVER B. HILL, *Acting Secretary of Agriculture.*

30938. Adulteration of butter. U. S. v. Mandan Creamery & Produce Co. Plea of guilty. Fine, $20. (F. & D. No. 42642. Sample Nos. 56989–C, 35340–D, 35341–D.)

This product was found upon examination to contain less than 80 percent by weight of milk fat.

On March 1, 1939, the United States attorney for the District of North Dakota, acting upon a report by the Secretary of Agriculture, filed in the district court an information against the Mandan Creamery & Produce Co., a corporation, Mandan, N. Dak., alleging shipments by it in violation of the Food and Drugs Act, on or about September 27, 1937, and August 3, 1938, from the State of North Dakota into the States of New York and Massachusetts of quantities of butter that was adulterated.

Adulteration was alleged in that a product containing less than 80 percent by weight of milk fat had been substituted for butter, a product which should

contain not less than 80 percent by weight of milk fat, as prescribed by the act of March 4, 1923.

On October 21, 1939, a plea of guilty having been entered, the court assessed a fine of $20.

GROVER B. HILL, *Acting Secretary of Agriculture.*

30939. Adulteration of frozen fish. U. S. v. 200 Cartons of Perch Fillets. Default decree of condemnation and destruction. (F. & D. No. 45521. Sample No. 55226–D.)

This product had been shipped in interstate commerce and remained unsold and in the original packages. At the time of examination it was found to be in whole or in part decomposed.

On June 26, 1939, the United States attorney for the Northern District of Illinois, acting upon a report by the Secretary of Agriculture, filed in the district court a libel praying seizure and condemnation of 200 cartons of perch fillets at Chicago, Ill.; alleging that the article had been shipped on or about June 8, 1939, by Feylers, Inc., from Rockland, Maine; and charging adulteration in violation of the Federal Food and Drugs Act.

The article was alleged to be adulterated in that it consisted wholly or in part of a decomposed animal substance.

On September 2, 1939, no claimant having appeared, judgment of condemnation was entered and the product was ordered disposed of by conversion into fertilizer.

GROVER B. HILL, *Acting Secretary of Agriculture.*

30940. Adulteration of flour. U. S. v. 40 Sacks of Flour. Default decree of condemnation and destruction. (F. & D. No. 45510. Sample No. 62429–D.)

This product had been shipped in interstate commerce and remained unsold and in the original packages. At the time of examination it was found to be insect-infested.

On June 19, 1939, the United States attorney for the Eastern District of Louisiana, acting upon a report by the Secretary of Agriculture, filed in the district court a libel praying seizure and condemnation of 40 sacks of flour at New Orleans, La.; alleging that the article had been shipped on or about April 26, 1939, by G. B. R. Smith Milling Co. from Sherman, Tex.; and charging adulteration in violation of the Food and Drugs Act. The article was labeled in part: "White Eagle Hard Wheat Flour."

It was alleged to be adulterated in that it consisted wholly or in part of a filthy vegetable substance.

On July 21, 1939, no claimant having appeared, judgment of condemnation was entered and the product was ordered destroyed.

GROVER B. HILL, *Acting Secretary of Agriculture.*

30941. Adulteration of flour. U. S. v. 29 Sacks of Flour. Default decree of condemnation and destruction. (F. & D. No. 45509. Sample No. 62950–D.)

This product had been shipped in interstate commerce and remained unsold and in the original packages. At the time of examination it was found to be insect-infested.

On June 19, 1939, the United States attorney for the Eastern District of Louisiana, acting upon a report by the Secretary of Agriculture, filed in the district court a libel praying seizure and condemnation of 29 sacks of flour at New Orleans, La.; alleging that the article had been shipped on or about April 13, 1939, by the New Era Milling Co. from Arkansas City, Kans.; and charging adulteration in violation of the Food and Drugs Act. The article was labeled in part: "Belflour It is Better Kansas Blended Flour."

The article was alleged to be adulterated in that it consisted wholly or in part of a filthy vegetable substance.

On July 21, 1939, no claimant having appeared, judgment of condemnation was entered and the product was ordered destroyed.

GROVER B. HILL, *Acting Secretary of Agriculture.*

30942. Adulteration of frozen rock lobster tails. U. S. v. 870 Boxes and 230 Boxes of Cape Rock Lobster and 100 Boxes of Captail Brand Tails. Consent decree of condemnation and destruction. (F. & D. No. 44823. Sample Nos. 8152–D, 8153–D, 8154–D.)

This product had been shipped in interstate commerce and remained unsold in the original packages. At the time of examination it was found to be in whole or in part decomposed.

On February 10, 1939, the United States attorney for the District of New Jersey filed a libel against 1,200 boxes of rock lobster tails at Jersey City, N. J.; alleging that the article had been shipped from New York, N. Y., on or about January 16 and 17, 1939, by the Merchants' Refrigerating Co.; and charging adulteration in violation of the Food and Drugs Act. The article was labeled in part: "Cape Rock Lobster" or "Captail Brand Tails Langouste."

It was alleged to be adulterated in that it consisted in whole or in part of a decomposed animal substance.

On October 25, 1939, the claimant having consented, judgment of condemnation was entered and the product was ordered destroyed.

GROVER B. HILL, *Acting Secretary of Agriculture.*

30943. Adulteration of tomato catsup. U. S. v. 71 Cases of Tomato Catsup. Default decree of condemnation and destruction. (F. & D. No. 45269. Sample No. 40978–D.)

Samples of this product were found to contain worm and insect fragments.

On May 6, 1939, the United States attorney for the Western District of Texas, acting upon a report by the Secretary of Agriculture, filed in the district court a libel praying seizure and condemnation of 71 cases of tomato catsup at Pecos, Tex.; alleging that the article had been shipped in interstate commerce on or about December 27, 1938, from Los Angeles, Calif., by California Sanitary Co., in pool car shipment, for Val Vita Food Products Co.; and charging adulteration in violation of the Food and Drugs Act. The article was labeled in part: "Val Vita Brand Tomato Catsup Val Vita Food Products Inc. Fullerton, California."

Adulteration was alleged in that the article consisted wholly or in part of a filthy vegetable substance.

On September 18, 1939, no claimant having appeared, judgment of condemnation was entered and the product was ordered destroyed.

GROVER B. HILL, *Acting Secretary of Agriculture.*

30944. Adulteration and misbranding of jams. U. S. v. 109 Cases and 284 Cases of Assorted Jams. Decree of condemnation. Product released under bond for relabeling. (F. & D. Nos. 44472, 44628. Sample Nos. 35956–D, 35957–D, 35958–D, 48842–D to 48845–D, inclusive.)

These actions involved various lots of assorted jams which contained added apple, and one lot of a product labeled raspberry jam which was found to be strawberry jam.

On December 5, 1938, and January 5, 1939, the United States attorney for the District of Massachusetts, acting upon reports by the Secretary of Agriculture, filed libels against 393 cases of assorted jams at Boston, Mass.; alleging that the articles had been shipped in interstate commerce on or about October 25 and December 3, 1938, by the Sun Distributing Co. from Brooklyn, N. Y.; and charging adulteration and misbranding in violation of the Food and Drugs Act. The article was labeled in part: "Nature's Own Pure Strawberry [or "Raspberry," "Peach," or "Blackberry"] Jam Manufactured by Fresh Grown Preserve Corp. Brooklyn, New York."

The strawberry, peach, blackberry, and one lot of raspberry jam were alleged to be adulterated in that apple had been substituted wholly or in part for the articles. One lot labeled raspberry jam was alleged to be adulterated in that strawberry jam had been substituted for raspberry jam.

The strawberry, peach, blackberry, and one lot of raspberry, were alleged to be misbranded in that the statements, "Pure Strawberry [or "Peach," "Raspberry," or "Blackberry"] Jam," were false and misleading and tended to deceive and mislead the purchaser. They were alleged to be misbranded further in that they were imitations of and were offered for sale under the distinctive names of other articles. One lot labeled raspberry jam was alleged to be misbranded in that the statement "Pure Raspberry Jam" was false and misleading and tended to deceive and mislead the purchaser when applied to strawberry jam. It was alleged to be misbranded further in that it was offered for sale under the distinctive name of another article.

On September 8, 1939, the Sun Distributing Co., Inc., of Lyndhurst, N. J., claimant, having admitted the allegations of the libels and the cases having been consolidated, judgment of condemnation was entered and the products were ordered released under bond conditioned that they be correctly labeled under the supervision of this Department.

GROVER B. HILL, *Acting Secretary of Agriculture.*

30945. Misbranding of butter. U. S. v. Swift & Co. Plea of nolo contendere. Fine, $125. (F. & D. No. 42689. Sample No. 50206–D.)

This product was short weight.

On August 19, 1939, the United States attorney for the Northern District of Mississippi, acting upon a report by the Secretary of Agriculture, filed in the district court an information against Swift & Co., a corporation having a place of business at West Point, Miss., alleging shipment by said corporation in violation of the Food and Drugs Act on or about December 1, 1938, from the State of Mississippi into the State of Alabama of a quantity of butter which was misbranded. The article was labeled in part: "Swift's Brookfield Butter."

The article was alleged to be misbranded in that the statements "1 lb. Net Weight" and "32 Lbs. Net," borne on the retail cartons and shipping cartons, respectively, were false and misleading and tended to deceive and mislead purchasers, since the said cartons contained less than the amount declared. Misbranding was alleged further in that the article was food in package form and the quantity of contents was not plainly and conspicuously marked on the outside of the package.

On October 10, 1939, a plea of nolo contendere was entered on behalf of the defendant and the court imposed a fine of $125.

GROVER B. HILL, *Acting Secretary of Agriculture.*

30946. Adulteration and misbranding of horseradish. U. S. v. Benjamin Cohen, George Iger, and Max Shapiro (Arrow Horseradish Co. (Regis Foods Co., successors)). Pleas of guilty. Fine, $1,050. (F. & D. No. 42653. Sample Nos. 3246–D, 3247–D, 12739–D, 12740–D, 44040–D, 44044–D.)

This product was a mixture of horseradish and parsnip. The containers of four of the shipments failed to bear a proper statement of the quantity of contents, two of the said shipments being unlabeled and two bearing the statement "Contents 6 Oz. Avd.," with the figure "5" written over the "6" with pencil.

On September 26, 1938, the United States attorney for the Southern District of New York, acting upon a report by the Secretary of Agriculture, filed in the district court an information against Benjamin Cohen, George Iger, and Max Shapiro, trading as Arrow Horseradish Co. (Regis Foods Co., successors), alleging shipment by said defendants in violation of the Food and Drugs Act, within the period from on or about May 11 to on or about June 14, 1938 from the State of New York into the State of New Jersey, of quantities of horseradish which was adulterated and misbranded. The information alleged further that on or about October 6 and 11, 1938, the said defendants sold certain quantities of horseradish under a guaranty that it was not adulterated or misbranded in violation of the Food and Drugs Act; that on or about October 7 and 12, 1938, the said horseradish, in the identical condition as when so sold and guaranteed, was shipped from the State of New York into the State of New Jersey by the purchaser thereof and that the said article was adulterated and misbranded in violation of said act. Certain shipments were labeled in part: (Bottle) "Arrow Brand Pure Horseradish." Others were labeled in part: "Dwarf Brand Pure Horseradish * * * Bloch & Guggenheimer, Inc." The bottles in two of the shipments were unlabeled.

Adulteration was alleged with respect to all lots in that a mixture of horseradish and parsnip had been substituted for horseradish. The labeled shipments were alleged to be adulterated further in that parsnip had been mixed and packed with the article so as to reduce or lower its quality and strength; and in that parsnip had been mixed with it so as to simulate the appearance of a product consisting wholly of horseradish, and in a manner whereby its inferiority was concealed.

The labeled lots were alleged to be misbranded in that the statement "Horseradish," borne on the bottle label, was false and misleading and tended to deceive and mislead the purchaser. The said lots were alleged to be misbranded further in that they consisted of mixtures of horseradish and parsnips prepared in imitation of horseradish and were offered for sale and sold under the distinctive name of another article, horseradish. The product in the two unlabeled lots and in the two lots in which the net weight had been overmarked were alleged to be misbranded in that it was food in package form and the quantity of contents was not plainly and conspicuously marked on the outside of the package.

On September 29, 1939, pleas of guilty were entered by the defendants, and the court imposed a fine of $350 on each, making a total of $1,050.

GROVER B. HILL, *Acting Secretary of Agriculture.*

30947. Adulteration and misbranding of horseradish. U. S. v. Monmouth Packing Co., Inc., and Julius Paley. Pleas of guilty. Defendants each fined $75 on count 1. Sentence suspended on remaining counts and defendants placed on probation for 3 months. (F. & D. No. 42652. Sample Nos. 12877–D, 14628–D, 25980–D, 26481–D, 33938–D, 35461–D, 35462–D.)

This product consisted of a mixture of turnip and horseradish. The labels of two of the lots failed to bear a plain and conspicuous statement of the quantity of contents.

On June 23, 1939, the United States attorney for the Eastern District of New York, acting upon a report by the Secretary of Agriculture, filed in the district court an information against the Monmouth Packing Co., Inc., Long Island City, N. Y., and Julius Paley, president of the corporation, alleging shipment by said defendants in violation of the Food and Drugs Act as amended, within the period from on or about June 28 to on or about July 28, 1938, from the State of New York into the States of New Jersey, Massachusetts, and Virginia of quantities of horseradish that was adulterated and misbranded. The article was labeled in part, variously: "Deyo's High Grade Horse Radish 6 Ozs. Avd. Manufactured By Wm. P. Deyo, Inc., L. I. City, N. Y."; "Muri Brand * * * Horse-Radish 6 New England Importation Co. Boston, Mass."; "Colonial Brand * * * Horse Radish Monmouth Packing Co., Inc."; "Colonial Brand * * * Horse Radish Colonial Packing Co., Inc., Brooklyn, N. Y."; "Horse Radish Contents 1 Qt."

The article was alleged to be adulterated in that turnip had been mixed and packed with it so as to reduce its quality or strength; in that turnip and horseradish had been mixed together so as to simulate the appearance of a product consisting wholly of horseradish, and in a manner whereby its inferiority to horseradish was concealed; and in that a mixture of turnip and horseradish had been substituted for a product consisting wholly of horseradish, which the article purported to be.

Misbranding was alleged in that the statement "Horse Radish," borne on the labels, was false and misleading and was borne on the said labels so as to deceive and mislead the purchaser, in that the said statement represented that the article consisted wholly of horseradish; whereas it consisted of a mixture of turnip and horseradish. It was alleged to be misbranded further in that it consisted of a mixture of turnip and horseradish prepared in imitation of horseradish and was offered for sale and sold under the distinctive name of another article. Two of the bottles were alleged to be misbranded further in that they were food in package form and the quantity of contents was not plainly and conspicuously marked on the outside of the package.

On June 30, 1939, pleas of guilty having been entered on behalf of the defendants, the court imposed a fine of $75 against each defendant on count 1 of the information. Sentence was suspended on the remaining 11 counts and the defendants were placed on probation for 3 months.

GROVER B. HILL, *Acting Secretary of Agriculture.*

30948. Adulteration and misbranding of feeding oatmeal. U. S. v. George Frederick Obrecht (P. Fred'k Obrecht & Son and The Hood Mills Co.). Plea of guilty. Fine, $5 and costs. (F. & D. No. 42755. Sample No. 5321–D.)

A mixture consisting almost entirely of wheat and rice products and containing little, if any, oat products was substituted for this product.

On September 28, 1939, the United States attorney for the District of Maryland, acting upon a report by the Secretary of Agriculture, filed in the district court an information against George Frederick Obrecht, trading as P. Fred'k Obrecht & Son and the Hood Mills Co., at Baltimore, Md., alleging shipment in violation of the Food and Drugs Act within the period from on or about January 13 to on or about March 24, 1939, from the State of Maryland into the State of Virginia, of a quantity of fine ground feeding oatmeal which was adulterated and misbranded. The article was labeled in part: "Manufactured for J. A. Forrest Company Minneapolis, Minn.

It was alleged to be adulterated in that a mixture consisting almost entirely of wheat and rice products and containing little, if any, oat products, had been substituted for fine ground feeding oatmeal, which it was represented to be.

Misbranding was alleged in that the statement "Fine Ground Feeding Oatmeal," borne on the tags, was false and misleading, and by reason of the said statement the article was labeled and branded so as to deceive and mislead the purchaser. It was alleged to be misbranded further in that it was prepared

in imitation of fine ground feeding oatmeal and was offered for sale and was sold under the distinctive name of another article.

On October 10, 1939, a plea of guilty was entered and the court imposed a fine of $5 and costs.

GROVER B. HILL, *Acting Secretary of Agriculture.*

30949. Adulteration and misbranding of horseradish. U. S. v. H. M. Field, Inc. Plea of guilty. Defendant fined $50 and placed on probation for 3 months. (F. & D. No. 42662. Sample Nos. 25449–D, 25459–D, 25476–D.)

This product consisted of a mixture of ground turnip, cornstarch, and mustard oil.

On June 23, 1939, the United States attorney for the Eastern District of New York, acting upon a report by the Secretary of Agriculture, filed in the district court an information against H. M. Field, Inc., New York, N. Y., alleging shipment by said corporation in violation of the Food and Drugs Act on or about April 16 and 28 and June 3, 1938, from the State of New York into the State of Connecticut, of quantities of horseradish which was adulterated and misbranded. A portion of the product was labeled in part: "Field's Best Horseradish." The remaining portion was invoiced as horseradish, but was unlabeled.

The article was alleged to be adulterated in that a mixture which consisted of ground turnip, parsnip, cornstarch, and mustard oil had been substituted for horseradish.

Misbranding was alleged with respect to two of the lots in that the statement "Horseradish," borne on the jar labels was false and misleading and tended to deceive and mislead the purchaser, since the article did not consist of horseradish. It was alleged to be misbranded further in that it was a mixture of ground turnip, parsnip, cornstarch, and mustard oil, prepared in imitation of horseradish; and was offered for sale and sold under the distinctive name of another article. The unlabeled portion was alleged to be misbranded in that it was food in package form and the quantity of the contents was not plainly and conspicuously marked on the outside of the package.

On June 30, 1939, a plea of guilty having been entered, the defendant was fined $50 and placed on probation for a period of 3 months.

GROVER B. HILL, *Acting Secretary of Agriculture.*

30950. Adulteration and misbranding of pulverized oats, feeding oatmeal, ground oats, flour middlings, and red dog feed. U. S. v. G. Fred Obrecht (P. Fred'k Obrecht & Son). Plea of guilty. Fine, $55 and costs. (F. & D. No. 42563. Sample Nos. 902–C, 903–C, 4921–D to 4929–D, inclusive.)

This case involved interstate shipment of the following feeds: Products represented to be feeding oatmeal, pulverized oats, and ground oats which contained in addition to such substances other ingredients such as rice hulls, rice fragments, rice bran, barley, barley hulls, cassava meal, and starch other than oat starch; flour middlings which consisted of wheat products and cassava meal; and red dog feed which consisted of wheat flour and tissues, rye flour and tissues, and cassava meal.

On October 19, 1938, the United States attorney for the District of Maryland, acting upon a report by the Secretary of Agriculture, filed in the district court an information against G. Fred Obrecht, trading as P. Fred'k Obrecht & Son at Baltimore, Md., alleging shipment by him in violation of the Food and Drugs Act within the period from about August 7 to about December 27, 1937, from Baltimore, Md., into the State of Massachusetts of quantities of pulverized oats, fine ground feeding oatmeal, ground oats, Draco Flour Middlings, and Farmso Red Dog Feed which were adulterated and misbranded. They were labeled in part, variously: "Hood Mills Company * * * Baltimore, Md."; "Farmers Service Bureau Baltimore, Md."; and "Dried Grains Corporation Baltimore, Md."

The pulverized oats were alleged to be adulterated in that a mixture of finely ground oats, a ground wheat product, and starchy material resembling cassava starch had been substituted for the article in one shipment; a mixture of ground oats and finely ground rice bran had been substituted for the article in two shipments; a mixture of ground oats, rice bran, broken rice, and cassava meal had been substituted for the article in one shipment; and a mixture of pulverized oats, ground rice bran and cassava meal had been substituted for the article in another shipment.

The fine ground feeding oatmeal was alleged to be adulterated in that a mixture of ground oats, finely ground rice bran, rice hulls, broken rice frag-

ments, and a cereal starch had been substituted for the article in one shipment; a mixture of oat products, broken rice, rice hulls, rice bran, and cassava meal had been substituted for the article in another shipment; and a mixture of oat products, rice bran, rice hulls, broken rice, and swollen starch grains other than oats had been substituted for the article in the third shipment.

The ground oats were alleged to be adulterated in that a mixture of ground oats, ground rice bran, fragments of barley and barley hulls and a starchy material closely resembling cassava starch had been substituted for the article.

The Draco Flour Middlings were alleged to be adulterated in that a mixture of wheat products and cassava meal had been substituted for the article.

The Farmso Red Dog Feed was alleged to be adulterated in that a mixture of wheat flour and tissues, rye flour and tissues, and cassava meal had been substituted for the article, i. e., a wheat byproduct.

All the articles were alleged to be misbranded in that the statements, "Pulverized Oats," "Fine Ground Feeding Oatmeal," "Ground Oats," "Flour Middlings," and "Red Dog" on the labels of the respective articles were false and misleading and were borne on said labels so as to deceive and mislead the purchaser. They were alleged to be misbranded further in that they were prepared in imitation of pulverized oats, fine ground feeding oatmeal, ground oats, flour middlings, and red dog, and were offered for sale and sold under the distinctive names of such articles. Certain of the shipments were alleged to be misbranded further in that the declaration of protein, fiber, and fat on the labels was false and misleading since there was found a deficiency of protein in some lots, an excess of fiber in some lots, and a deficiency of fat in one lot.

On October 10, 1939, a plea of guilty having been entered, the court imposed a fine of $55 and costs.

GROVER B. HILL, *Acting Secretary of Agriculture.*

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U. S. GOVERNMENT PRINTING OFFICE: 1940

United States Department of Agriculture

FOOD AND DRUG ADMINISTRATION

NOTICES OF JUDGMENT UNDER THE FOOD AND DRUGS ACT

[Given pursuant to section 4 of the Food and Drugs Act]

30951–31000

DRUGS

[Approved by the Acting Secretary of Agriculture, Washington, D. C., May 3, 1940]

30951. Adulteration and misbranding of gauze bandages. U. S. v. 21 Dozen Gauze Bandages. Consent decree of condemnation and destruction. (F. & D. No. 42996. Sample No. 27238–D.)

This product had been shipped in interstate commerce and remained unsold and in the original packages. At the time of examination it was found to be contaminated with viable micro-organisms.

On June 30, 1938, the United States attorney for the District of Colorado, acting upon a report by the Secretary of Agriculture, filed in the district court a libel praying seizure and condemnation of 21 dozen gauze bandages at Denver, Colo., consigned by the Bay Division, Parke, Davis & Co.; alleging that the article had been shipped from Bridgeport, Conn.; and charging adulteration and misbranding in violation of the Food and Drugs Act. On October 12, 1939, the libel was amended in order to allege that the shipment had been made sometime before the 10th day of March, 1938.

Adulteration was alleged in that the purity of the article fell below the professed standard or quality under which it was sold, namely, (carton) "The gauze bandage in this package was sterilized during manufacture. A sterilizing process is also applied to the finished package."

Misbranding was alleged in that the above-quoted statements were false and misleading.

On September 15, 1938, the Bay Division of Parke, Davis & Co. filed claim for the product and also filed an answer denying the material allegations of the libel. On October 12, 1939, the libel having been amended as aforesaid, and claimant having filed an amended answer averring that it was without knowledge or information sufficient to form a belief as to whether the bandages were not sterile when transported or when seized, and consenting to the entry of a decree, judgment of condemnation was entered and the product was ordered destroyed.

GROVER B. HILL, *Acting Secretary of Agriculture.*

30952. Adulteration and misbranding of absorbent cotton. U. S. v. 300 Pounds and 175 Pounds of Absorbent Cotton. Consent decree of condemnation. Product released under bond. (F. & D. Nos. 44596, 44597. Sample Nos. 41990–D, 41991–D.)

This product had been shipped in interstate commerce and remained unsold and in the original packages. At the time of examination it was found to be contaminated with viable micro-organisms.

On December 28, 1939, the United States attorney for the District of New Jersey, acting upon a report by the Secretary of Agriculture, filed in the district court libels praying seizure and condemnation of two lots consisting of 300 pounds and 175 pounds, respectively, of absorbent cotton at Atlantic City, N. J.; alleging that the article had been shipped by the Acme Cotton Products Co., Inc., from Dayville, Conn., the latter lot on or about July 1, 1937, and the former on or about April 29, 1938; and charging that it was adulterated and misbranded in violation of the Food and Drugs Act.

The article was alleged to be adulterated in that its purity fell below the professed standard or quality under which it was sold, (label of portion) "Hospital * * * Surgical Absorbent Cotton," (label of remainder) "Nurse Brand Hospital Absorbent Cotton Especially Adapted for Hospital Use," since

it was not sterile and was not suitable for hospital, surgical, or nursing purposes.

It was alleged to be misbranded in that the statements quoted above, and the design of a nurse on both labels, were false and misleading when applied to an article which was not sterile.

On November 15, 1939, the Acme Cotton Products Co., Inc., having appeared as claimant and having admitted the allegations of the libels, and the cases having been consolidated, judgment of condemnation was entered, and the product was ordered released under bond conditioned that it be disposed of for any appropriate purpose other than for medical purposes or for conditions for which absorbent cotton is usually used.

GROVER B. HILL, *Acting Secretary of Agriculture.*

30953. Misbranding of Saurinol. U. S. v. 5 Large and 3 Small Packages of Saurinol. Default decree of condemnation and destruction. (F. & D. No. 45511. Sample No. 56239–D.)

The labeling of this product bore false and fraudulent curative and therapeutic claims and other misrepresentations.

On July 20, 1939, the United States attorney for the Northern District of California, acting upon a report by the Secretary of Agriculture, filed in the district court a libel praying seizure and condemnation of 8 packages of Saurinol at Oakland, Calif.; alleging that the article had been shipped in interstate commerce on or about June 9, 1939, by Saurinol Distributors from Colorado Springs, Colo.; and charging misbranding in violation of the Food and Drugs Act as amended.

Analysis showed that the article consisted essentially of medium boiling petroleum oil with a small proportion of quinine alkaloid.

It was alleged to be misbranded in that the statement on the label, "A Natural Oil," was false and misleading as applied to an article consisting essentially of medium boiling petroleum oil with a small proportion of quinine alkaloid. It was alleged to be misbranded further in that the following statements in the labeling were statements regarding its curative or therapeutic effects and were false and fraudulent: "For relief in sinus, hay fever, exposed cancer, varicose veins, pyorrhea, trench mouth, lacerations, ulcers, skin diseases * * * sinus, hay fever, apply with atomizer, Varicose veins, skin trouble use oil and massage, Exposed cancer, ulcers, lacerations apply with gauze. Pyorrhea or trench mouth, rinse mouth."

On November 30, 1939, no claimant having appeared, judgment of condemnation was entered and the product was ordered destroyed.

GROVER B. HILL, *Acting Secretary of Agriculture.*

30954. Misbranding of Hain Col-Lax; alleged misbranding of Hain Kelp Tablets. U. S. v. Harold Hain (Hain Pure Food Co.). Judgment of guilty on counts charging misbranding of Col-Lax; not guilty on counts charging misbranding of Kelp Tablets. Fine, $300. (F. & D. No. 40817. Sample Nos. 36735–C, 36736–C.)

The labeling of the Col-Lax bore false and fraudulent curative and therapeutic claims and false and misleading representations regarding its ingredients. That of the Hain Kelp Tablets bore curative and therapeutic claims and other representations that were alleged to be false, fraudulent, and misleading.

On June 10, 1938, the United States attorney for the Southern District of California, acting upon a report by the Secretary of Agriculture, filed in the district court an information against Harold Hain, trading as the Hain Pure Food Co., Los Angeles, Calif., alleging shipment by said defendant on or about May 1 and August 7, 1937, from the State of California into the State of Ohio, of a quantity of Hain Col-Lax and of a quantity of Hain Kelp Tablets.

Analysis of the Col-Lax showed that it consisted essentially of ground psyllium, agar, and milk sugar. Microscopic examination showed the presence of the bran as well as the mucilaginous portion of the psyllium seed. Analysis of the Kelp Tablets showed that they consisted of powdered kelp.

Misbranding of the Col-Lax was alleged in that certain statements in the labeling represented that the article was free from herbs and drugs; that in preparing the psyllium for it the irritating substance, such as bran, was removed, leaving only the highly mucilaginous part; that it was an ideal laxative food, an extract of the mucilaginous, nonirritating part of the psyllium and that it contained no ingredients which were habit-forming or irritating, which statements were false and misleading in view of the composition of the article, as disclosed by analysis. Further misbranding of the Col-Lax was alleged in that

statements in the labeling regarding its curative and therapeutic effectiveness falsely and fraudulently represented that it was not a cathartic; would not irritate the most delicate system, might be used with safety in colitis, ulceration, hemorrhoids, etc.; that the lactose was capable of feeding the friendly colon bacteria; that it would help to maintain the acid-alkaline balance in the intestinal tract; that it was capable of adequately meeting an urgent need for a natural, harmless, effective laxative food, of being used with safety and good results in all cases of intestinal disorders, including aggravated cases of chronic constipation, colitis, prolapsus hemorrhoids, etc., of producing easy and copious elimination, without in the least irritating the delicate, already sensitive or inflamed mucous membrane of the intestines, of supplying both the needed bulk and lubrication, of helping to overcome constipation by stimulating intestinal musculature into normal action and by changing the intestinal flora, and of averting through its use exclusively all danger from ordinary laxatives; and that it was an ideal laxative food and accepted as such by many physicians.

It was alleged in the information that the Kelp Tablets were misbranded in that representations in the circular that the article was a true gland food, that it was a wholesome and effective product that differed from the many so-called gland foods in that it was wholly natural and was without drugs or other harmful stimulants, that it was a true food and not a medicine, that it was devoid of drugs and provided the means by which the value which otherwise might be obtained only by the consumption of prodigious quantities of the raw products were by it made available, were false and misleading. It was alleged further in the information that the circular contained representations regarding the curative and therapeutic effects of the article which were false and fraudulent, namely, representations that it was effective to cure glandular inadequacies, nervous debility, mental exhaustion, general rundown conditions, and was so effective because its qualities as a food and the plant elements contained therein imparted to it constructive capability with regard to the human physical organization.

On August 17, 1939, the defendant having pleaded not guilty and a jury having been waived, the case came on for trial before the court. The trial was concluded on August 23, 1939. The case was continued to August 28 for decision, on which date the court found the defendant guilty on the two counts charging misbranding of Col-Lax, and not guilty on the two counts charging misbranding of Kelp Tablets. The defendant was sentenced to pay a fine of $150 on each of the two counts on which he had been convicted.

GROVER B. HILL, *Acting Secretary of Agriculture.*

30955. Adulteration and misbranding of elixir of iron, quinine, and strychnine; misbranding of carbolic ointment. U. S. v. Sexton Drug Store. Plea of guilty. Fine, $10. (F. & D. No. 40808. Sample Nos. 12466–D, 12470–D.)

The elixir of iron, quinine, and strychnine differed from the standard established by the National Formulary in that it was deficient in certain essential ingredients and contained other ingredients not found in the formulary product. It contained a smaller proportion of alcohol than that declared on its label. The carbolic ointment was labeled to indicate that it was ointment of carbolic acid, namely, phenol ointment, a product recognized in the United States Pharmacopoeia. It contained a smaller proportion of phenol than the pharmacopoeia product and was not effective as an antiseptic when used as directed.

On January 23, 1939, the United States attorney for the District of Massachusetts, acting upon a report by the Secretary of Agriculture, filed in the district court an information against the Sexton Drug Store, a corporation, Springfield, Mass., alleging shipment by said company in violation of the Food and Drugs Act on or about March 7, 1938, from the State of Massachusetts into the State of Connecticut, of a quantity of elixir of iron, quinine, and strychnine that was adulterated and misbranded, and a quantity of carbolic ointment that was misbranded. The articles were labeled in part: "G. Fox & Co., Inc., Distributors * * * Hartford, Conn."

The elixir of iron, quinine, and strychnine was alleged to be adulterated in that it was sold under a name recognized in the National Formulary but differed from the standard of strength, quality, and purity laid down therein since the formulary requires that the article consist of 125 cc. of tincture of ferric citrochloride, 8 grams of quinine hydrochloride, 175 milligrams of strychnine sulfate, 10 cc. of compound spirit of orange, 240 cc. of alcohol, 390 cc. of glycerin, and a sufficient quantity of distilled water to make the product

measure 1,000 cc.; whereas the article contained ingredients other than those mentioned in the formulary, namely, soluble iron phosphate, sugar, and saccharin; it contained no glycerin; its alcohol content was 9.3 percent by volume; and the quantities of iron and alkaloids (i. e., quinine and strychnine including cinchonine, not an ingredient described in the formulary), were only approximately one-third of the quantities prescribed in the formulary. It was alleged to be misbranded in that the statement on the label, "Alcohol 16%," was false and misleading, since it contained not more than 9.3 percent of alcohol by volume.

The carbolic ointment was alleged to be misbranded in that the statement "Carbolic Acid" on the label, when used to designate and identify an article that was represented to be a valuable and safe antiseptic dressing for wounds, cuts, bites of insects, barber's itch, etc., was false and misleading in that it had the same significance as that of "ointment of carbolic acid," a name recognized in the United States Pharmacopoeia as a synonym for "phenol ointment," a drug defined in said pharmacopoeia, which requires that phenol ointment shall contain not less than 1.8 percent of phenol, namely, carbolic acid; whereas the article was not ointment of carbolic acid as prescribed in said pharmacopoeia, since it contained a smaller proportion of phenol than that prescribed—the percentage in 5 of the units examined varying from 0.442 percent to 1.34 percent. It was alleged to be misbranded further in that the statement "a valuable and safe antiseptic" was false and misleading, since the article was not effective as an antiseptic when used as directed.

On November 14, 1939, a plea of guilty having been entered on behalf of the defendant, the court imposed a fine of $10.

GROVER B. HILL, *Acting Secretary of Agriculture.*

30956. Adulteration and misbranding of cod-liver oil. U. S. v. Royal Manufacturing Company of Duquesne, Kolomon Kovacs, Samuel S. Kovacs, and Martin Kovacs. Plea of nolo contendere. Fine, $100. (F. & D. No. 42682. Sample No. 15851–D.)

This product contained smaller amounts of vitamin A and vitamin D than it was represented to contain.

On May 16, 1939, the United States attorney for the Western District of Missouri, acting upon a report by the Secretary of Agriculture, filed in the district court an information against the Royal Manufacturing Company of Duquesne, a corporation trading at Kansas City, Mo., and Kolomon Kovacs, Samuel S. Kovacs, and Martin Kovacs, officers of the said corporation, alleging shipment by them on or about September 26, 1937, from the State of Missouri into the State of Oklahoma, of a quantity of cod liver oil that was adulterated and misbranded. The article was labeled in part: "Double 'D' Laboratories, Chicago, U. S. A."

Adulteration was alleged in that the strength of the article fell below the professed standard and quality under which it was sold, in that it was represented to contain not less than 2,250 U. S. P. XI units of vitamin A per gram and to contain double the amount of vitamins D and A found in the best grade of U. S. P. oil; whereas it contained not more than 1,125 U. S. P. units of vitamin A per gram and did not contain double the amount of vitamins D and A found in the best grade U. S. P. oil.

It was alleged to be misbranded in that the statement, "Contains not less than 2,250 U. S. P. XI units * * * per gram," borne on the carton, was false and misleading.

On October 16, 1939, pleas of nolo contendere having been entered, the court imposed a fine of $100 to cover all defendants.

GROVER B. HILL, *Acting Secretary of Agriculture.*

30957. Misbranding of Snare's Re-Lef. U. S. v. Henry I. Snare (Snare Bros. Ointment Co.). Plea of guilty. Fine, $25. (F. & D. No. 42728. Sample No. 37354–D.)

The labeling of this product bore false and fraudulent curative and therapeutic claims.

On July 18, 1939, the United States attorney for the Western District of Missouri, acting upon a report by the Secretary of Agriculture, filed in the district court an information against Henry I. Snare, trading as the Snare Bros. Ointment Co., Chillicothe, Mo., alleging shipment by said defendant in violation of the Food and Drugs Act as amended, on or about October 29, 1938,

from the State of Missouri into the State of Nebraska, of a quantity of Snare's Re-Lef that was misbranded.

Analysis showed that the article consisted essentially of volatile oils including mustard oil, methyl salicylate, menthol, and a camphoraceous oil, incorporated in a petrolatum base.

Misbranding was alleged in that certain statements, designs, and devices regarding the therapeutic and curative effects of the article, appearing in the labeling, falsely and fraudulently represented that it was effective as a treatment, remedy, and cure for pneumonia; effective as a treatment and relief for sinus trouble, catarrh, asthma, flu, rheumatism, piles, cuts, swelling, open sores, appendicitis, and pleurisy; effective to kill germs and infection, to stop inflammation, and to aid "Nature to recovery;" effective as a treatment for anything that causes pain on man or beast; and effective for the relief of throat and lung trouble.

On December 4, 1939, the defendant entered a plea of guilty and the court imposed a fine of $25.

GROVER B. HILL, *Acting Secretary of Agriculture.*

30958. Adulteration and misbranding of paregoric and Bateman's Drops. U. S. v. Harry B. McNeal (Kent Drug Co.). Plea of guilty. Fine, $40 and costs. (F. & D. No. 42735. Sample Nos. 34685–D, 35011–D.)

The paregoric contained a smaller amount of morphia than that declared on its label and was short of the declared volume. Bateman's Drops contained a smaller amount of laudanum than that declared on the label.

On September 18, 1939, the United States attorney for the District of Maryland, acting upon a report by the Secretary of Agriculture, filed in the district court an information against Harry B. McNeal, trading as the Kent Drug Co., Baltimore, Md., alleging shipment by said defendant in violation of the Food and Drugs Act, within the period from on or about August 19, 1938, to on or about January 25, 1939, of quantities of paregoric and Bateman's Drops that were adulterated and misbranded. The articles were labeled in part: "McNeal's Standard * * * Uniform Brand Paregoric"; and "Bateman's Pectoral Drops."

The paregoric was alleged to be adulterated in that its strength fell below the professed standard and quality under which it was sold since each fluid ounce of the article was represented to contain ¼ grain of morphia; whereas each fluid ounce contained less than the amount represented, namely, not more than 0.18 grain of morphia. It was alleged to be misbranded in that the statements on the label, "Morphia ¼ gr. to fl. oz." and "Each Fluid Ounce Contains ¼ gr. Morphia—Contains 6 fld. drams or over," were false and misleading, since it contained less than ¼ grain of morphia per fluid ounce and the bottles contained less than 6 fluid drams of the said article.

Bateman's Drops were alleged to be adulterated in that their strength fell below the professed standard and quality under which they were sold in that each fluid ounce was represented to contain 20 minims of laudanum; whereas each fluid ounce contained less than the amount represented, namely, not more than 13.1 minims of laudanum. Misbranding was alleged in that the statements, "Each Fluidounce represents Gran. Opium 1⁹⁄₁₀ grs." and "Each Fluidounce contains 20 Minims Laudanum," appearing in the label, were false and misleading, since the said article contained less than 20 minims of laudanum per fluid ounce and each fluid ounce of said article represented less than 1⁹⁄₁₀ grains, namely, not more than 1.18 grains of granulated opium.

On November 9, 1939, a plea of guilty was entered by the defendant and the court imposed a fine of $40 and costs.

GROVER B. HILL, *Acting Secretary of Agriculture.*

30959. Misbranding of X-Ode. U. S. v. 330 Packages, 1,650 Cans, and 167 Drums of X-Ode. Decrees of condemnation and forfeiture. Product released under bond for relabeling. (F. & D. No. 45523. Sample No. 48404–D.)

The labeling of certain packages of this product bore false and fraudulent curative and therapeutic claims.

On June 26, 1939, the United States attorney for the District of Minnesota, acting upon a report by the Secretary of Agriculture, filed in the district court a libel praying seizure and condemnation of 80 2-ounce packages, 250 5-ounce packages, 1,650 1-pound cans, 89 5-pound drums, 77 10-pound drums, and 1 50-

pound drum of X-Ode at St. Paul, Minn.; alleging that the article had been shipped within the period from on or about July 26, 1937, to on or about March 11, 1938, by Products, Inc., from Columbus, Ohio; and charging misbranding within the meaning of the Food and Drugs Act as amended.

Analysis showed that the article consisted of sodium carbonate (99.15 per cent) and potassium permanganate (0.85 percent).

The article contained in the 2-ounce and 5-ounce packages was alleged to be misbranded in that the following statement on the package regarding its curative or therapeutic effect was false and fraudulent: "Use for treating skin infections."

It was also alleged to be misbranded under the Insecticide Act of 1910, as reported in notice of judgment No. 1723 published under that act.

On November 10, 1939, the X-Products Co. St. Paul, Minn., having appeared as claimant and having admitted the allegations of the libel, judgment of condemnation was entered and the product was ordered released to the claimant under bond for relabeling.

GROVER B. HILL, *Acting Secretary of Agriculture.*

30960. Misbranding of Agalax, adulteration and alleged misbranding of Kayan, and alleged misbranding of Seedol Kelpamalt. U. S. v. Associated Laboratories, Inc., Louis A. Tuvin, Julius H. Tuvin, and John M. Bair. Pleas of guilty. Total fines, $750, i. e., Associated Laboratories, Inc., $300; Louis A. Tuvin, $300; Julius H. Tuvin, $75; and John M. Bair, $75. (F. & D. No. 39722. Sample Nos. 3093–C, 3101–C.)

The Agalax was misbranded because it was falsely represented to be a mixture of natural products which included no drug or medicine; whereas it contained, among other ingredients, phenolphthalein, a coal-tar drug. The Kayan was represented to consist of granulated powder from the sap of an Asiatic tree; whereas its principal active ingredient was phenolphthalein. The Kayan and Seedol Kelpamalt were enclosed in a cardboard box called a "deal," which contained seven cartons each carton containing a package of Kayan and a package of Kelpamalt. Strewn in the bottom of the "deal" were a booklet, circular, and leaflet which contained representations regarding the curative and therapeutic properties of both products.

On March 20, 1939, the United States attorney for the Southern District of New York, acting upon a report by the Secretary of Agriculture, filed in the district court an information against the above-named defendants, alleging shipment by them in violation of the Food and Drugs Act on or about March 21 and July 25, 1936, from the State of New York into the State of California, of a quantity of Agalax which was misbranded, a quantity of Kayan which was adulterated and was also alleged to be misbranded, and a quantity of Seedol Kelpamalt which also was alleged to be misbranded. The articles were labeled in part, variously: "Agalax A Natural Laxative * * * The Agalax Company, New York, N. Y."; "Seedol Kelpamalt Tablets * * * Prepared by The Kelpamalt Co."; and "Kayan The Modern Laxative Method * * * Kayan Company * * * New York, N. Y."

Analysis of the Agalax showed that it consisted essentially of Plantago (psyllium) seeds and small brown masses, the latter containing sugar, starch, dextrin, and phenolphthalein (0.13 grain per teaspoonful).

The Agalax was alleged to be misbranded in that certain statements appearing in the labeling represented that it was a mixture consisting exclusively of purely natural products and containing no drug or medicine, and that it was a food; whereas it was a mixture of Plantago seeds (psyllium), agar, sugar, starch, dextrin, and phenolphthalein, and was not a food but a drug. It was alleged to be misbranded further in that the following statements on the can label regarding its curative and therapeutic effects were false and fraudulent, since it was not capable of producing a curative and therapeutic effect in the diseases, disorders, or conditions mentioned therein: "Agalax is ideally adapted for the successful treatment of Chronic Constipation—Bowel Sluggishness—Auto Intoxication and all conditions requiring peristaltic stimulant of dependable action. Agalax has been found highly beneficial in cases of Hemorrhoids (Piles) and painful defecation, * * * Agalax * * * promotes regular and easy stool habits * * * it insures regular bowel action. Note: Agalax is not a cathartic or purgative. It works gradually by promoting normal bowel action. Persons accustomed to habitual use of cathartics may increase the dosage of Agalax above indicated to four teaspoonsful twice daily for the first three or four days."

The Kayan was alleged to be adulterated in that it fell below the professed standard and quality under which it was sold in that it was represented in the labeling to be "A granulated powder from the sap of an Asiatic tree—Kayan"; whereas it consisted essentially of a synthetic coal-tar cathartic, namely, phenolphthalein, a gum, sugar, and starch.

The information also contained two counts charging that the Seedol Kelpamalt and the Kayan were misbranded because of alleged false and fraudulent curative and therapeutic representations made for them in the literature contained in the "deal" described hereinbefore. On July 18, 1939, the defendants filed a demurrer to these two counts, which was sustained by the court without opinion, the date of ruling being August 14, 1939.

On September 25, 1939, the defendants entered pleas of guilty to the counts charging misbranding of Agalax and the count charging adulteration of Kayan, and the court imposed the following fines: Associated Laboratories, Inc., $300; Louis A. Tuvin, $300; Julius H. Tuvin, $75; and John M. Bair, $75.

GROVER B. HILL, *Acting Secretary of Agriculture.*

30961. Misbranding of Harris Blu-Rib-Un Spray. U. S. v. 19 5-Gallon Cans of Harris Blu-Rib-Un Spray. Default decree of condemnation, forfeiture, and destruction. (F. & D. No. 45465. Sample No. 30768–D.)

Examination of samples of this veterinary product showed that it consisted of mineral oil of the nature of kerosene and nitrobenzene. Its labeling bore false and fraudulent curative and therapeutic claims.

On June 9, 1939, the United States attorney for the District of New Mexico, acting upon a report by the Secretary of Agriculture, filed in the district court a libel praying seizure and condemnation of 19 5-gallon cans of Harris Blu-Rib-Un Spray at Chama, N. Mex.; alleging that the article had been shipped on or about June 2, 1938, by the R. L. Harris Co. from Omaha, Nebr.; and charging misbranding in violation of the Food and Drugs Act as amended.

The article was alleged to be misbranded in that the following statements regarding its curative or therapeutic effects, appearing in the labeling, were false and fraudulent: "For throat infection in poultry, * * * As a preventive spray twice a week. The above treatment is also valuable as an aid in combating colds and roup. * * * Flu. Blu-Rib-Un Spray will also be found to be a valuable aid in combating Flu in hogs. * * * Use a lot of pressure and shoot the spray over the hogs so that they will be compelled to inhale the vapor. * * * If the above directions are carefully followed as a means to combat Flu in hogs, very good results will be obtained. * * * Flu in hogs causes very big losses to the hog raiser by the loss of weight, death rate, and the herd going off the feed, and the above treatment with Blu-Rib-Un Spray will be found very beneficial in helping the farmer cut down his losses. * * * as an insecticide and healing agent on cuts and infection on the lips and mouth of little pigs. * * * For ring worms and scabs on calves * * * As A Healer. For collar sores, gall spots and any wounds such as wire cuts, etc., Blu-Rib-Un Spray will be found very effective and a great aid as a healing agency. * * * provides a 100% disinfectant for the cuts from the shearing."

The article was also alleged to be misbranded under the Insecticide Act of 1910, as reported in notice of judgment No. 1722, published under that act.

On November 10, 1939, no claimant having appeared, a decree of condemnation, forfeiture, and destruction was entered.

GROVER B. HILL, *Acting Secretary of Agriculture.*

30962. Adulteration and misbranding of prophylactics. U. S. v. 39¼ Gross of Prophylactics. Default decree of condemnation and destruction. (F. & D. No. 45298. Sample No. 47455–D.)

Samples of this product were found to be defective in that they contained holes.

On May 10, 1939, the United States attorney for the District of Maryland, acting upon a report by the Secretary of Agriculture, filed in the district court a libel against 39¼ gross of prophylactics at Baltimore, Md.; alleging that the article had been shipped in interstate commerce on or about January 4, 1939, by Goodwear Rubber Co., Inc., from New York, N. Y.; and charging adulteration and misbranding in violation of the Food and Drugs Act. The article was labeled in part "Gold Ray."

Adulteration was alleged in that the strength of the article fell below the professed standard or quality under which it was sold.

Misbranding was alleged in that the following statements in the labeling were false and misleading: (Gross carton) "The Finest Latex Prophylactic * * * Disease Preventative * * * Air Tested"; (3-unit carton) "Disease Preventative * * * Tested * * * Guaranteed Five Years"; (1-dozen carton) "Disease Preventative * * * Sold for Prevention of Disease"; (leaflet) "The United States Department of Agriculture, Food and Drug Administration, has notified all manufacturers of Prophylactic Rubber Goods that this merchandise is sold for prevention of disease and therefore comes under their jurisdiction. We guarantee that this merchandise will stand any reasonable test demanded by the Government in accordance with the Pure Food and Drug Laws. Guarantee * * * We guarantee this merchandise to be as good and as safe as any brand on the market today."

On June 8, 1939, no claimant having appeared, judgment of condemnation and destruction was entered and the product was ordered destroyed.

GROVER B. HILL, *Acting Secretary of Agriculture.*

30963. Adulteration and misbranding of Pinip (liquid) and misbranding of Pinip Laxative Cold Capsules. U. S. v. David M. Leff (Merit Laboratories Co.). Plea of nolo contendere. Fine, $25. (F. & D. No. 42718. Sample Nos. 41951–D, 41952–D, 41978–D.)

Both shipments of the Pinip Cold Capsules contained acetophenetidin, a derivative of acetanilid, the presence of which was not declared. One shipment contained acetanilid in excess of the amount declared and its labeling bore false and fraudulent curative and therapeutic claims. The Pinip (liquid) contained materially less vitamin D than the amount declared on its label.

On July 19, 1939, the United States attorney for the Eastern District of Pennsylvania, acting upon a report by the Secretary of Agriculture, filed in the district court an information against David M. Leff, trading as the Merit Laboratories Co., Philadelphia, Pa., alleging shipment by said defendant in violation of the Food and Drugs Act, on or about September 16, 1938, from the State of Pennsylvania into the State of New Jersey, of a quantity of Pinip (liquid) which was adulterated and misbranded and of quantities of Pinip Laxative Cold Capsules which were misbranded.

Analysis of a sample taken from one of the shipments of Pinip Laxative Cold Capsules showed that each capsule contained a minimum of 3.03 grains of acetophenetidin, a minimum of 1.30 grains of acetanilid, and approximately 20 units of vitamin C. The product in this shipment was alleged to be misbranded in that it contained approximately 3 grains of acetophenetidin, a derivative of acetanilid, per capsule and the label did not bear a statement of the quantity or proportion of acetophenetidin contained therein. It was alleged to be misbranded further in that the statement on the label, "Each capsule contains 1 grain Acetanilid" was false and misleading since each of said capsules contained more than 1 grain of acetanilid, namely, not less than 1.3 grains. It was alleged to be misbranded further in that certain statements in the labeling regarding its curative and therapeutic effects falsely and fraudulently represented that it was effective for the purpose of lessening the acidity of the body and facilitating the absorption of the active vitamin principles of citrus fruits and effective to enable the patient to derive the benefits of the vitamin principle of citrus fruits.

The Laxative Cold Capsules in the remaining shipment were alleged to be misbranded in that each capsule contained approximately 2 grains of acetophenetidin, a derivative of acetanilid, and the package containing them did not bear a statement on its label of the quantity or proportion of acetophenetidin contained therein.

The Pinip Liquid was alleged to be adulterated in that its strength fell below the professed standard or quality under which it was sold in that it was labeled (bottle) "Fortified With 1000 Units Vitamin D"; whereas the contents of the said bottle contained less than 1,000 units of vitamin D, namely, approximately 250 U. S. P. units of vitamin D.

It was alleged to be misbranded in that the statement "Fortified With 1000 Units Vitamin D," borne on the bottle label, was false and misleading since the contents of each of said bottles did not contain 1,000 units of vitamin D.

On October 13, 1939, the defendant entered a plea of nolo contendere and the court imposed a fine of $25.

GROVER B. HILL, *Acting Secretary of Agriculture.*

30964. Misbranding of Formula No. HBP 98 For Controlling High Blood Pressure, Formula No. FH 60 Endocrine Compound Female, Formula No. FH 60 Endocrine Cycle Food Female, Acid Eliminating Powder, Formula No. DP 64 Duodenin—Pancreas Tablets, Formula No. RS 63 Useful in Secondary Anemia. U. S. v. Ray Alma Richardson, Helen Richardson (Mrs. R. A. Richardson), and Myra Deane Richardson, copartners, trading as the Myra Deane Co. Pleas of guilty. Fines, $240. F. & D. No. 42729. Sample Nos. 48704-C, 48705-C, 48716-C, 48717-C, 36862-D, 36864-D.)

The labeling of these products bore false and fraudulent representations regarding their curative and therapeutic effectiveness and false and misleading claims regarding their composition.

On August 29, 1939, the United States attorney for the Western District of Missouri, acting upon a report by the Secretary of Agriculture, filed in the district court an information against Ray Alma Richardson, Helen Richardson (Mrs. R. A. Richardson), and Myra Deane Richardson, copartners, trading as the Myra Deane Co., Kansas City, Mo., alleging shipment by said defendants in violation of the Food and Drugs Act as amended, within the period from on or about March 10, 1937, to on or about November 8, 1938, from the State of Missouri into the States of Kansas and Oklahoma of quantities of the above-named drug preparations which were misbranded. The articles were labeled in part: "Dr. R. A. Richardson's Special Formula."

Analyses showed that the Formula No. HBP 98 For Controlling High Blood Pressure consisted of compressed tablets composed essentially of glandular material, including 0.09 gram of thyroid per tablet; that the Formulas No. FH 60 Endocrine Compound Female and Endocrine Cycle Food Female consisted of compressed tablets composed essentially of milk sugar and animal protein matter resembling glandular substance (feeding tests on animals showed that the product when administered in doses of one or two tablets per animal was inert); that the Acid Eliminating Powder consisted essentially of sodium bicarbonate, sodium carbonate, calcium carbonate, magnesium oxide, and peppermint; and that Formulas DP 64 and RS 63 contained a considerable amount of animal tissues, apparently glandular in nature, and crystalline milk sugar—RS 63 also containing finely ground bone.

The Formula No. HBP 98 was alleged to be misbranded in that the statement on the label, "No Drugs," was false and misleading in that it represented that no drugs were present in the article; whereas it contained thyroid and other glandular material. It was alleged to be misbranded further in that the statements "For controlling high blood pressure" and "contains pancreas and thyroid substances in balanced combination to aid in controlling high blood pressure," regarding its curative and therapeutic effects were false and fraudulent since it was inert.

The Formula No. FH 60 Endocrine Compound Female was alleged to be misbranded in that the statements, "Endocrine Compound Female Contains interrelated gland substances of the female endocrine cycle," were false and misleading since it was inert animal material resembling glandular substance and milk sugar. It was alleged to be misbranded further in that the statements on the label, "Endocrine Compound Female" and "Contains interrelated gland substances of the female endocrine cycle," regarding its curative and therapeutic effects, falsely and fraudulently represented that it was capable of remedial, corrective, and regulative action when administered in the treatment of the organs whose functions are related to and affect the female menstrual cycle.

The Formula No. FH 60 Endocrine Cycle Food Female was alleged to be misbranded in that the statements, "Contains interrelated gland substances and enzymes of the female endocrine cycle" and "Endocrine cycle food Female," borne on the label, were false and misleading in that they represented that the ingredients of the article were active gland substances and that it was capable of producing an enzymic action; whereas it consisted of inert animal matter resembling glandular substance and milk sugar, and was incapable of producing enzymic action. It was alleged to be misbranded further in that representations in the labeling regarding its curative and therapeutic effects falsely and fraudulently represented that it was capable of remedial, corrective, and regulative action when administered in the treatment of organs whose functions are related to and affect the feminine menstrual cycle; that it was effective to maintain or restore health, vitality, or pep; to correct over-

weight or underweight conditions; to influence health; to give pep to one's step or elasticity or tone to one's muscles; to favorably influence pathological conditions; to adjust devitalized conditions of the body; to correct overstimulation or increased activity of the thyroid; to prevent or remedy the accumulation of toxins in the body, the acceleration or retardation of the action of the glands, the unbalancing of the functioning of the endocrine system or metabolism of the body; effective to correct mental or physical sluggishness due to insufficient glandular substances; to regulate fat metabolism; to remedy underweight, weakness, or emaciation due to deficiency of elements supplied by the glandular system; to remedy obesity, headaches, and despondency, renew energy and vitality; to relieve the pain and suffering accompanying menstruation, to promote digestion and assimilation of food, to effect regaining of strength, to increase weight or maintain normal weight; to remedy toxic goiter or fibroid tumor; to correct atrophy and loss of function of the sex glands; to effect improvement in the health and physical and mental condition of men and women who have reached the age of forty; to cause ill persons to recover; to make practically all people healthy; to prevent attacks of hay fever and asthma; to correct painful menstrual periods; to increase resistance against disease and bacteria; to correct overweight or underweight; and that it was effective in normalizing the functions of the endocrine glands.

The Acid Eliminating Powder was alleged to be misbranded in that the statement "Acid Eliminating Powder," borne on the label, was false and misleading since the article was not an acid eliminant as so understood. It was alleged to be misbranded further in that representations in the labeling regarding the curative and therapeutic effects of the article falsely and fraudulently represented that it was effective to eliminate indigestion; to help nature neutralize the toxic acid of the system; to avert or correct active or passive liver congestion; to prevent abscess of the liver or cirrhosis of the liver; to increase the resistance of the body; to correct habitual constipation; to eliminate chronic constipation; to prevent the development of conditions requiring surgical intervention; to improve digestion; to remedy female weaknesses, painful menstruation, vaginal irritation, hot flashes and other symptoms of the menopause, leucorrhea (whites), sexual frigidity, hay fever, or asthma; to increase resistance against disease and bacteria; to correct menstrual irregularities; to cause the annoying symptoms of the menopause to disappear; to correct constipation, hives, acidosis, or skin eruptions; and to prevent heart congestion, gall-bladder congestion, liver and kidney congestion, poor digestion, mental depression, fatigue, and rheumatism or arthritis.

The Formula No. DP 64 Duodenin and Pancreas Substance Tablets were alleged to be misbranded in that the statements in the labeling, "Contains Duodenin and Pancreas Substance" and "Formula No. DP 64 Duodenin-Pancreas Tablets," were false and misleading in that they represented that the article contained duodenin and pancreas and that it was active and effective because of the presence of duodenin and pancreas; whereas it consisted of inert animal material resembling glandular substance and milk sugar. It was alleged to be misbranded further in that the statement "Useful in Diabetes Mellitus," regarding its curative and therapeutic effect, was false and fraudulent in that the said statements represented that the article was medicinally effective in the treatment of diabetes mellitus; whereas it was not.

The Formula No. RS 63 Useful in Secondary Anemia was alleged to be misbranded in that the statement "Rich in calcium salts and iron," appearing in the labeling, was false and misleading in that it represented that each tablet of the article contained proportionately and relatively large quantities of calcium salts and iron; whereas each tablet contained not more than 0.28 grain (0.018 gram) of combined calcium and not more than 0.0027 grain (0.00017 gram) of combined iron. It was alleged to be misbranded further in that the statement "Useful in Secondary Anemia," appearing in the labeling, regarding its curative and therapeutic effects, was false and fraudulent in that the said statement represented that the article was of medicinal effectiveness in the treatment of secondary anemia; whereas it was not.

On September 20, 1939, pleas of guilty were entered by the defendants and the court imposed a fine of $240 for all defendants.

GROVER B. HILL, *Acting Secretary of Agriculture.*

30965. Adulteration and misbranding of Coal Breaker Pills and Lucky Heart Kiss Sweet Tooth Paste. Misbranding of San-I-Gene Sanitary Antiseptic Douche Powder, Vapo Genuine Over Night Salve, Healo Salve, Genuine Preacher's No-Ru, Glandeen Called Courage Tablets, Bewino Beef Wine & Iron Tonic & Builder, Chippewa Genuine Guaranteed Old Indian Medicine, Tiger Head Antiseptic Nerve & Bone Liniment, Lucky Heart the Wonder Skin Ointment & Brightener, Kandu Vegetable Compound, Genuine Erbru Health Herbs & Iron, Chippewa Indian Herbs Tea, Erbru Pine Compound Cough Syrup, and Orene Hygiene Soap. U. S. v. Lucky Heart Laboratories, Inc., Morris Shapiro, and Ben M. Spears. Pleas of guilty. Total fines, $7,000. (F. & D. No. 42720. Sample Nos. 53061–D to 53077–D, inclusive, 53079–D, 53080–D.)

The San-I-Gene Sanitary Antiseptic Douche Powder bore in its labeling false and fraudulent curative and therapeutic claims, and it would not act as an antiseptic when used as directed. Analysis showed that the article, a white powder, consisted chiefly of boric acid, potassium alum, paraformaldehyde, flavoring, and a trace of phenol. The Vapo Genuine Over Night Salve bore false and fraudulent curative and therapeutic claims. Analysis showed that the article, a yellowish semi-solid mass, contained volatile oils, chiefly eucalyptol, pine oil, and methyl salicylate, in a petrolatum base. The labeling for Healo Salve bore false and fraudulent curative and therapeutic claims. Analysis showed that it consisted chiefly of a petrolatum base containing zinc oxide, camphor, resorcinol, and benzocaine. The labeling for each of the two shipments of Genuine Preacher's No-Ru bore false and fraudulent curative and therapeutic claims, and in one shipment the article was falsely represented to derive its therapeutic properties from roots, herbs, and berries. Analysis showed that it consisted essentially of small proportions of potassium acetate, methenamine, extracts of plant drugs including juniper and black pepper, and water. The labeling for Glandeen Called Courage Tablets bore false and fraudulent curative and therapeutic claims. Analysis showed that it contained extracts of plant drugs, including nux vomica and damiana, and iron carbonate, coated with calcium carbonate and sugar. The labeling for Bewino Beef Wine & Iron Tonic and Builder bore false and fraudulent curative and therapeutic claims. The label also failed to declare the quantity or proportion of alcohol contained in the article. Analysis showed that it consisted essentially of small proportions of iron and ammonium citrate, alcohol (17.8 percent by volume), and water. The Chippewa Genuine Guaranteed Old Indian Medicine bore in its labeling false and fraudulent curative and therapeutic claims. It also was falsely represented to consist entirely of substances derived from roots, herbs, and berries. Analysis showed that it consisted essentially of Epsom salt, plant drugs including a laxative drug, licorice, and water colored with caramel. The labeling for Tiger Head Antiseptic Nerve & Bone Liniment bore false and fraudulent curative and therapeutic claims. More alcohol and chloroform was claimed than was found in the product, and the labeling failed to bear a statement of the quantity or proportion of alcohol and chloroform contained therein. Analysis showed that it consisted essentially of a small proportion of volatile oils including oil of sassafras, chloroform (23.0 minims per fluid ounce), alcohol (42.7 percent by volume), and water. The labeling for Lucky Heart the Wonder Skin Ointment & Brightener bore false and fraudulent curative and therapeutic claims. The label also falsely represented that the product was a harmless ointment that would not burn or injure the most delicate skin. Analysis showed that it contained a small proportion of red mercuric oxide in a petrolatum base. The labeling for Coal Breaker Pills bore false and fraudulent curative and therapeutic claims. It was falsely represented on the label that the pills contained bromides, and the label failed to state the quantity or proportion of acetanilid contained in them. Analysis showed that they contained acetanilid (0.93 grain per pill), extracts of plant drugs including capsicum and a laxative drug, small proportions of camphor, a quinine and an iron compound, calcium carbonate, and talc. No bromides were found in the product. The labeling for the two shipments of Kandu Vegetable Compound bore false and fraudulent curative and therapeutic claims. Analysis in each case showed that the product consisted essentially of extracts of plant drugs, alcohol, sugar, and water, flavored with oil of cloves and colored with caramel. The labeling for Genuine Erbru Health Herbs & Iron bore false and fraudulent curative and therapeutic claims. It also represented falsely that the product derived its therapeutic properties from roots, herbs, barks, and berries. Analysis showed that the product consisted essentially of Epsom salt, small proportions of an iron compound, extracts of plant drugs including

a laxative drug, salicylates, sugar, and water. The labeling for Chippewa Indian Herbs Tea bore false and fraudulent curative and therapeutic claims. Analysis showed that the tea consisted essentially of plant material including juniper berries, fennel seed, licorice root, aniseed, unidentified flower petals, and a woody material. The labeling for Lucky Heart Kiss Sweet Tooth Paste bore false and fraudulent curative and therapeutic claims. It was also falsely represented on the label that the product was a germicide. Analysis showed that it consisted essentially of calcium carbonate, soap, starch, a silicate, and sugar, flavored with oil of peppermint. The labeling for Erbru Pine Compound Cough Syrup failed to bear a statement of the quantity or proportion of chloroform contained in the product. Analysis showed that the cough syrup consisted essentially of extracts of plant drugs including white pine, chloroform (6 minims per fluid ounce), sugar, and water colored with caramel. The labeling for Orene Hygiene Soap bore false and fraudulent curative and therapeutic claims. It was also falsely represented to be an antiseptic. Analysis showed that it was a sodium soap, colored and perfumed.

On August 3, 1939, the United States attorney for the Western District of Tennessee, acting upon a report by the Secretary of Agriculture, filed in the district court an information against Lucky Heart Laboratories, Inc., Memphis, Tenn., Morris Shapiro, and Ben. M. Spears, alleging shipment in violation of the Food and Drugs Act within the period from July 18 to October 26, 1938, from the State of Tennessee into the State of Missouri of quantities of the above-named drugs, of which two were both adulterated and misbranded and the remainder were misbranded.

The San-I-Gene Sanitary Antiseptic Douche Powder was alleged to be misbranded in that the statements on the label falsely and fraudulently represented that it was effective to heal and to protect the female sexual organs safely, harmlessly, and dependably; and that it was effective to correct tendencies toward infections and diseases. It was alleged to be misbranded further in that the statements in the labeling, "Antiseptic Douche Powder * * * Dissolve from one to two teaspoons in a quart or more of warm water," were false and misleading since it was not antiseptic when used as directed.

The Vapo Genuine Over Night Salve was alleged to be misbranded in that the statements in the labeling falsely and fraudulently represented that it was effective as a healing and penetrating salve for coughs, sore throats, and chest colds; effective as a treatment, remedy, and cure for soreness and tightness in the chest or throat, coughs, chest colds, tonsillitis, asthma, sore throat, neuralgia, lung colds, hoarseness, headaches, backaches, cuts, stiff neck, rheumatism, lumbago, and itching piles; effective as a relief for coughs, hoarseness, and sore throat; and effective to penetrate "to where the trouble is."

The Healo Salve was alleged to be misbranded in that the statements borne in the labeling falsely and fraudulently represented that the article was effective to heal the skin; effective as a treatment, remedy, and cure for wounds, cuts, sores, boils, burns, pimples, skin diseases, irritation and eruptions, itching or burning caused by eczema, piles, and ugly skin eruptions; effective as an instant relief for wounds, cuts, boils, skin diseases, skin eruptions, eczema, and piles; effective to keep wounds clean; and as a treatment, remedy, and cure for animal cuts and wounds.

The Genuine Preacher's No-Ru in one shipment was alleged to be misbranded in that the statements borne in the labeling falsely and fraudulently represented that the article was effective as a kidney, bladder, backache, and rheumatism remedy; as a treatment, remedy, and cure for backache, weak bladder, burning, scalding sensation, getting up nights, aching bones and leg pains, swollen hands and feet, highly colored urine, dizziness, nagging backaches, pains in back, loss of pep and energy, swelling, puffiness under eyes and rheumatic pains; and effective to clean out waste poison in the kidneys, to purify the blood, and to wash out body poisons.

The Glandeen Called Courage Tablets were alleged to be misbranded in that the statements in the labeling falsely and fraudulently represented that the article was effective as a powerful strengthener and invigorator through its action on the glands; as a treatment, remedy, and cure for loss of vitality, loss of manhood, run-down condition, fits of depression, nervousness, and irritability; and effective to restore courage, youthfulness, happiness, strength, vigor, energy, pep, and vitality through its action on the glands.

The Bewino Beef Wine & Iron Tonic & Builder was alleged to be misbranded in that the labeling falsely and fraudulently represented that the article was

effective as a tonic and builder; to build up sickly, run-down, and puny people, and to give pep and energy; as a stimulant, blood builder, and blood purifier; and to aid digestion. This product was alleged to be misbranded further in that it contained alcohol and the labeling failed to bear a statement of the quantity or proportion of alcohol contained therein.

The Chippewa Genuine Guaranteed Old Indian Medicine was alleged to be misbranded in that the statements in the labeling falsely and fraudulently represented that the article was effective as a general tonic, as a treatment, remedy, and cure for tired feeling, nervousness and indigestion, sour stomach, bad breath, and torpid liver; effective to purify the blood, to clear bad and ugly skin, to give a healthy, beautiful complexion, to build up the system, and make it hard for sickness to "lay hold," and to insure health and strength. This product was alleged to be misbranded further in that the statements borne in the labeling, "Made with Nature's pure, fresh, full strength roots, herbs and berries," were false and misleading since the product did not consist entirely of substances derived from roots, herbs, and berries, but did consist of a substantial proportion of Epsom salt from which its therapeutic properties were chiefly derived.

The Tiger Head Antiseptic Nerve and Bone Liniment was alleged to be misbranded in that the statements in the labeling falsely and fraudulently represented that it was effective as a nerve and bone liniment; as a relief from aches, pains, swelling, simple neuritis, headaches, toothaches, weak back, lumbago, stomach aches, pains and cramps, neuralgia, sciatica, earache, cankered sore mouth, sore nipples, ulcers, sore throat, hoarseness, bronchial cough, whooping cough, spasmodic croup, diarrhoea, dysentery, bloody flux, cholera morbus, muscular rheumatism, muscular cramp, lameness, lame back, stiff, sore, and sprained muscles, pains in back, all swellings, aches and stiffness, gas pains, colic, indigestion, heartburn, weakness, and swimming in the head; and to eliminate pains. This product was alleged to be misbranded further in that the statements in the labeling, "Contains 50% alcohol by volume Chloroform 26 Min. to each Fl. Ounce * * * Alcohol 50%," were false and misleading since the product did not contain 50 percent of alcohol and each fluid ounce of the product did not contain 26 minims of chloroform. It was alleged to be misbranded further in that it contained alcohol and chloroform, and the label failed to bear a statement of the quantities or proportions thereof.

The Lucky Heart the Wonder Skin Ointment & Brightener was alleged to be misbranded in that the statements in the labeling falsely and fraudulently represented that it was effective to remove blemishes and clear the complexion; to heal sallow skin and other skin imperfections or blemishes, eczema, pimples, dark blotches, ringworm, tetter, and rough, bumpy, muddy-looking skin; to remove skin blemishes, eczema, pimples, dark splotches, and other skin troubles; to insure young skin in just a few treatments; and to aid in removing germ-caused blemishes, blackheads, dark splotches, and surface pimples. It was alleged to be misbranded further in that the statement in the labeling, "A harmless guaranteed ointment that will not burn or injure the most delicate skin," was false and misleading since the product contained red mercuric oxide, which might be harmful or injurious to the skin.

The product Coal Breaker Pills was alleged to be adulterated in that its strength fell below the professed standard and quality under which it was sold since it was represented to contain bromides; whereas it contained no bromides. It was alleged to be misbranded in that the statements in the labeling falsely and fraudulently represented that it was effective as a treatment, remedy, and cure for biliousness, dizziness, sour stomach, gas, and colic; and effective to destroy infection and to tone the entire system. It was alleged to be misbranded further in that the statement on the label, "Contains bromides," was false and misleading since it contained no bromides. It was alleged to be misbranded still further in that it contained acetanilid and the label failed to bear a statement of the quantity or proportion of acetanilid contained therein.

The Kandu Vegetable Compound was alleged to be misbranded in that the statements in the labeling falsely and fraudulently represented that it was effective as a female regulator and builder, and as a system builder and regulator for weak, run-down nervous women; as a treatment, remedy, and cure for female weakness, cramps, pains, blue feeling, painful menstruation periods, headaches, nervousness, run-down condition, loss of appetite, and female irregularity; as a relief for troubles common to women; to insure health and happiness; to bring back the sparkle in the eye; to help women enjoy life, and (one shipment only) that it was effective to clean ugly, bad, splotchy skin.

The Genuine Preacher's No-Ru in one shipment was alleged to be misbranded in that the statements in the labeling falsely and fraudulently represented that it was effective as a kidney, bladder, backache, and rheumatism remedy; as a treatment, remedy, and cure for backache, weak bladder, burning, scalding sensation, getting up nights, aching bones and leg pains, swollen hands and feet, high colored urine, dizziness, nagging backaches, pains in back, loss of pep and energy, swelling, puffiness under eyes and rheumatic pains; and effective to clean out waste poison in the kidneys, to purify the blood, and to wash out body poisons.

The Genuine Preacher's No-Ru in a later shipment was alleged to be misbranded in that the statements in the labeling falsely and fraudulently represented that the article was effective as a remedy in the treatment of disorders of the kidneys, liver, and bladder, rheumatism and backache; as a relief of backaches, dizziness, burning, smarting sensation, weak bladder, aching bones, leg pains, and rheumatic pains; to purify the blood and to insure healthy clear skin and youthful feeling; as a treatment, remedy and cure for aching limbs, backache, loss of appetite, aching elbow joints, rheumatic pains, swollen feet, dizziness and circles under eyes; to prevent the kidneys from becoming clogged with poisonous matters and to decrease the danger of acid poison; and to make one feel younger and better in every way. This product was alleged to be misbranded further in that the statements, "No-Ru is made with fresh-pure-roots-herbs and berries Nature's Remedy * * * Contains Nature's Roots, Herbs and Berries," were false and misleading since it did not consist entirely of substances derived from roots, herbs, and berries, but did consist in part of potassium acetate and methenamine, mineral substances not derived from roots, herbs, and berries.

The Genuine Erbru Health Herbs and Iron was alleged to be misbranded in that the statements in the label falsely and fraudulently represented that it was effective as a treatment, remedy, and cure for heartburn, torpid liver, irregular action of the kidneys, dull pains, sour stomach, physical exhaustion, headaches, billiousness and similar ailments, indigestion, loss of appetite, blotches, sallow complexion, nervousness, dizziness, skin eruptions, boils, weakness, run-down condition and sleeplessness; as a blood and nerve tonic; to strengthen and build up the nerves and to purify the blood; as a strength builder and purifier; to clear the complexion and clean the system, to rid the system of the poisons and health-destroying waste that clog up the bowels and digestive tract; as a relief for swimming in the head, gas pains, indigestion, bloating, and sour stomach; to insure a clear, bright, healthy complexion; to get one well and keep one well; and to restore the normal action of the stomach and liver. This product was alleged to be misbranded further in that the statements in the labeling, "Use Herbs as the Indians did Erbru Health Herbs and Iron * * * The Wonderful Herb Medicine Genuine Erbru Health Herbs and Iron Full strength roots, herbs, barks, berries, and iron compound tonic. You get the full strength of Erbu's pure Roots, Herbs, Barks, Berries, Flowers, and Iron because it's sealed in for your protection * * * Erbru is fresh full strength roots, herbs, barks, berries and iron. Nature's own remedy. Guaranteed made from pure roots, herbs, barks, berries and iron," were false and misleading since the product did not consist essentially of substances derived from roots, herbs, barks, and berries, but did consist in large part of Epsom salt, from which its therapeutic properties were chiefly derived.

The Chippewa Indian Herbs Tea was alleged to be misbranded in that the statements in the labeling falsely and fraudulently represented that the article was effective as a tonic, and as a treatment, remedy, and cure for upset stomach, biliousness, headaches, and bad complexion; as a health restorer; as a relief for dyspepsia and biliousness; and to cool and cleanse the blood, to tone the liver and kidneys, and to clean the stomach.

The Lucky Heart Kiss Sweet Tooth Paste was alleged to be adulterated in that its strength fell below the professed standard and quality under which it was sold since it was not a germicide, as represented in the labeling. It was alleged to be misbranded in that the statements in the labeling falsely and fraudulently represented that it was effective to strengthen the gums, to make gums healthy and red, and to prevent decay. It was alleged to be misbranded further in that the statement "Kills Germs" was false and misleading since it was not a germicide.

The Erbru Pine Compound Cough Syrup was alleged to be misbranded in that it contained chloroform and the label failed to bear a statement of the quantity or proportion of chloroform that it contained.

The Orene Hygiene Soap was alleged to be misbranded in that the statements in the labeling falsely and fraudulently represented that it was effective when used in connection with Heal-O-Salve, to relieve discomfort and varieties of open sores, irritated skin, and similar ailments. This product was alleged to be misbranded further in that the statement on the wrappers, "Antiseptic," was false and misleading since it was not an antiseptic.

On November 8, 1939, pleas of guilty were entered on behalf of each of the defendants and the court imposed a fine of $3,499.80 against Lucky Heart Laboratories, Inc., a fine of $1,750.10 against Morris Shapiro, and a fine of $1,750.10 against Ben M. Spears, a total of $7,000.

GROVER B. HILL, *Acting Secretary of Agriculture.*

30966. Adulteration and misbranding of ether. U. S. v. 83 Cans, 129 Cans, and 40 Cans of "Ether U. S. P. 10 * * * (Ethyl Oxide U. S. P. XI)." Default decrees of condemnation, forfeiture, and destruction. (F. & D. Nos. 45468, 45469, 45470. Sample Nos. 53689-D, 53690-D, 53692-D.)

Samples of this product were found to contain peroxide, when tested according to the tests laid down in both tenth and eleventh revisions of the United States Pharmacopoeia.

On June 14, 1939, the United States attorney for the Northern District of Illinois, acting upon a report by the Secretary of Agriculture, filed in the district court libels praying seizure and condemnation of 252 cans of "Ether U. S. P. 10 * * * (Ethyl Oxide U. S. P. XI)" at Chicago, Ill.; alleging that the article had been shipped within the period from on or about February 3, to on or about May 1, 1939, by Merck & Co., Inc., from St. Louis, Mo.; and charging adulteration and misbranding in violation of the Food and Drugs Act.

The article was alleged to be adulterated since it was sold under names recognized in the United States Pharmacopoeia, i. e. "ether" and "ethyl oxide," but differed from the standard of strength, quality, and purity as determined by the test laid down in the said pharmacopoeia and its own standard was not stated on the label. It was alleged to be adulterated further since its strength and purity fell below the professed standard and quality under which it was sold, namely, ether U. S. P. 10.

It was alleged to be misbranded since the statement "Ether U. S. P. 10 * * * (Ethyl Oxide U. S. P. XI)," borne on the label, was false and misleading in that it did not conform to the specifications of the tenth revision of the United States Pharmacopoeia for ether, nor to the specifications of the eleventh revision of the pharmacopoeia for ethyl oxide, since it contained peroxide.

On September 2, 1939, no claimant having appeared, decrees of condemnation, forfeiture, and destruction were entered.

GROVER B. HILL, *Acting Secretary of Agriculture.*

30967. Misbranding of International Colic Medicine and International Chicken Cholera Medicine. U. S. v. International Stock Food Co., Inc., and Erle B. Savage. Pleas of guilty. Fine, $300. (F. & D. No. 40788. Sample Nos. 50524-C, 50525-C.)

The colic medicine contained a smaller proportion of alcohol than that claimed on the label and it also was found to be ineffective against the ailments and conditions for which it was recommended. The chicken cholera medicine was found to be ineffective in the treatment and prevention of cholera in chickens.

On March 7, 1939, the United States attorney for the District of Minnesota, acting upon a report by the Secretary of Agriculture, filed in the district court an information against the International Stock Food Co. and Erle B. Savage, of Minneapolis, Minn., alleging shipment by them in violation of the Food and Drugs Act on or about March 13 and June 17, 1937, from Minneapolis, Minn., into the State of Louisiana, of quantities of International Colic Medicine and International Chicken Cholera Medicine that were misbranded.

The colic medicine was alleged to be misbranded in that the statement "contains 18 percent Alcohol," borne on the label and in a printed circular were false and misleading. It was alleged to be misbranded further in that the statements in the labeling regarding its curative and therapeutic effects falsely and fraudulently represented that it was effective as a treatment for colic, spasmodic colic, gas colic, flatulent colic, kidney colic, bloat, acute indigestion, grain founder or bloat, and stoppage of water; that it was a quick, safe, sure medicine for the treatment of ordinary colic and ordinary acute indigestion,

would neutralize the gases and acids, stop fermentation of the food, restore the stomach and bowels to their normal condition, afford relief from colic as soon as the first symptoms appear and that in the majority of cases of colic it would produce a helpful effect within 10 to 20 minutes after it was administered to the livestock.

The chicken cholera medicine was alleged to be misbranded in that the statements on the label regarding its curative and therapeutic effects falsely and fraudulently represented that it was effective medicinally when used in the treatment of cholera in chickens, and that it was effective to prevent cholera in chickens.

On September 26, 1939, the defendants entered pleas of guilty and were fined $100 jointly on each of the three counts.

GROVER B. HILL, *Acting Secretary of Agriculture.*

30968. Adulteration and misbranding of First Aid Kits. U. S. v. 55½ Dozen Packages and 76 Dozen Packages of First Aid Kits. Product released under bond for relabeling and reconditioning. (F. & D. Nos. 45512, 45513. Sample Nos. 56229–D, 56231–D.)

This product had been shipped in interstate commerce and remained unsold and in the original packages. At the time of examination the absorbent cotton in the kits was found to be contaminated with viable micro-organisms.

On June 21, 1939, the United States attorney for the Northern District of California, acting upon a report by the Secretary of Agriculture, filed in the district court a libel praying seizure and condemnation of 131½ dozen packages of First Aid Kits at San Francisco, Calif.; alleging that the article had been shipped on or about July 20, 1938, and April 14, 1939, from New Rochelle, N. Y.; and charging adulteration and misbranding in violation of the Food and Drugs Act. The article was labeled in part: "White Cross All Purpose First Aid Kit" or "Guardian First Aid Emergency Kit."

It was alleged to be adulterated in that its purity fell below the professed standard or quality under which it was sold, namely, (packages of absorbent cotton) "Sterilized," since the cotton was not sterile but was contaminated with viable micro-organisms.

Misbranding was alleged in that the following statements on the packages were false and misleading when applied to an article which was not sterile: (Absorbent cotton, all cartons) "Sterilized"; (some cartons) "The White Cross of Perfection is your Protection * * * Sterilized after Packaging"; (leaflet enclosed with White Cross All Purpose First Aid Kits) "Absorbent Cotton (Sterilized)."

On August 31, 1939, a claimant having appeared and having filed an answer, judgment of condemnation was entered and the product was ordered released under bond conditioned that it be relabeled and reconditioned so as to comply with the Food and Drugs Act.

GROVER B. HILL, *Acting Secretary of Agriculture.*

30969. Adulteration and misbranding of tincture of belladonna leaves, ephedrine inhalant, and elixir of iron, quinine, and strychnine. U. S. v. Bernard Ulman (The National Pharmaceutical Manufacturing Co.). Plea of guilty. Fine, $150. (F. & D. No. 42699. Sample Nos. 34324–D, 34330–D, 34335–D.)

The tincture of belladonna leaves contained alkaloids of belladonna leaf in excess of the amount prescribed in the United States Pharmacopoeia. The Ephedrine Inhalant contained less ephedrine than prescribed by the National Formulary and less than declared on the label. The Elixir Iron, Quinine and Strychnine contained anhydrous quinine and strychnine in excess of the amount prescribed in the National Formulary.

On April 13, 1939, the United States attorney for the District of Maryland, acting upon a report by the Secretary of Agriculture, filed in the district court an information against Bernard Ulman, trading as the National Pharmaceutical Manufacturing Co., Baltimore, Md., alleging shipment by him in violation of the Food and Drugs Act on or about October 12, October 13, and November 9, 1938, from the State of Maryland into the District of Columbia of quantities of the above-named drugs, which were adulterated and misbranded.

The tincture of belladonna leaves was alleged to be adulterated in that it was sold under a name recognized in the United States Pharmacopoeia but differed from the standard of strength, quality, and purity as determined by the test laid down therein since it yielded not less than 0.041 gram of the

alkaloids of belladonna leaf per 100 cubic centimeters; whereas the pharmacopoeia provides that 100 cubic centimeters of the article shall yield not more than 0.033 gram of the alkaloids of belladonna leaf. It was alleged to be misbranded in that the following statements borne on the bottle label were false and misleading: "Tincture of Belladonna Leaves (Tinctura Belladonnae Foliorum) U. S. P. * * * Standard—0.027 Gm. to 0.033 Gm. total alkaloids per 100 mils."

The ephedrine inhalant (nebula ephedrinae) was alleged to be adulterated in that it was sold under a name recognized in the National Formulary but differed from the standard of strength, quality, and purity as determined by the tests laid down therein, in that each 1,000 grams of the article contained not more than 6 grams of ephedrine; whereas the formulary provides that the article contain not less than 10 grams of ephedrine in each 1,000 grams. It was alleged to be adulterated further in that its strength and purity fell below the professed standard and quality under which it was sold, since it was represented to contain 1 percent of ephedrine; whereas it contained not more than 0.6 percent. It was alleged to be misbranded in that the statement, "(Nebula Ephedrinae) N. F. VI Contains Ephedrine 1%," borne on the bottle label, was false and misleading.

The elixir iron, quinine, and strychnine was alleged to be adulterated in that it was sold under a name recognized in the National Formulary, but differed from the standard of strength, quality, and purity as determined by the tests laid down therein, since it contained not less than 7.618 grams of anhydrous quinine and strychnine per each 1,000 cubic centimeters of the article; whereas the formulary provides that the article shall contain in each 1,000 cubic centimeters quinine hydrochloride and strychnine sulfate equivalent to 6.675 grams of anhydrous quinine and strychnine. It was alleged to be misbranded in that the statement, "Elixir Iron, Quinine and Strychnine (Elixir Ferri Quinine Et Strychnine) N. F. VI," borne on the bottle labels, was false and misleading.

On October 9, 1939, a plea of guilty having been entered, the court imposed a fine of $150.

GROVER B. HILL, *Acting Secretary of Agriculture.*

30970. Adulteration and misbranding of prophylactics. U. S. v. 3½ Gross, 2⅙ Gross, and 2 Gross of Prophylactics. Default decree of condemnation and destruction. (F. & D. Nos. 45402, 45403, 45404. Sample Nos. 54901–D, 54902–D, 54903–D.)

Samples of this product were found to be defective in that they contained holes.

On May 24, 1939, the United States attorney for the Northern District of Illinois, acting upon a report by the Secretary of Agriculture, filed in the district court a libel praying seizure and condemnation of 7 11/12 gross of prophylactics at Chicago, Ill.; alleging that the article had been shipped in interstate commerce on or about April 4, 1939, by Olympia Laboratory from Atlanta, Ga.; and charging adulteration and misbranding in violation of the Food and Drugs Act. The article was labeled in part: "Club House Brand"; or "Peerless Brand."

It was alleged to be adulterated in that its strength fell below the professed standard or quality under which it was sold.

The article was alleged to be misbranded in that the following statements appearing on the packages were false and misleading: "Choicest grade of materials * * * Represent the highest quality * * * For the prevention of contagious diseases."

On July 31, 1939, no claimant having appeared, judgment of condemnation was entered and the product was ordered destroyed.

GROVER B. HILL, *Acting Secretary of Agriculture.*

30971. Misbranding of Foltis Juice-O-Veg. U. S. v. Juice-O-Veg, Inc. Plea of guilty. Fine, $100. (F. & D. No. 38616. Sample No. 60192–B.)

False and fraudulent curative and therapeutic claims were made for this product in its labeling.

On May 18, 1939, the United States attorney for the Southern District of New York, acting upon a report by the Secretary of Agriculture, filed in the district court an information against Juice-O-Veg, Inc., of New York, N. Y., alleging shipment by said company in violation of the Food and Drugs Act on or about May 19, 1936, from New York, N. Y., to Long Beach, Calif., of a

quantity of Foltis Juice-O-Veg that was misbranded under section 8 of the Food and Drugs Act, in the case of drugs.

Analysis showed that the article consisted of plant juices (95 percent of which was water), containing inconsequential proportions of salts of iron, calcium, manganese, magnesium, potassium and sodium, phosphates, and silicates.

The article was alleged to be misbranded in that certain statements in a circular enclosed in the package containing it, regarding its curative and therapeutic effects, were false and fraudulent, since the product was falsely and fraudulently recommended as a protector of life; to raise resistance to infection, to help the eyes, nourish the nerves, tone the digestive system; to prevent tooth decay, aching joints, and anemia; to strengthen gums, to strengthen the heart, to neutralize acid, to heal wounds, to make strong bones, teeth, red blood, and the body flexible; to flush the cells, relax and reduce nerve tension, carry oxygen, harden the tooth enamel, to aid hair growth and whiten the eyes; to aid in bone-knitting and to give the necessary protectors of life; to be effective as a stimulating drink; to cause sparkling eyes and cheerful faces, radiance of youthful vigor, and the rapture of youthfulness and life; to be effective as a blood cleanser, as a cure for facial blemishes, as a reducing agent and to give more pep; to be effective as a treatment for those who are only half alive and saturated with acids; to be effective as a treatment for blemished complexions, dull eyes, jaded appetites, weakened nerves, and drawn and haggard faces; and to neutralize acid, to strengthen nerves, to restore appetite, to regain youth, and to defer old age.

On July 18, 1939, a plea of guilty was entered and the court assessed a fine of $100.

GROVER B. HILL, *Acting Secretary of Agriculture.*

30972. Misbranding of Muscleflex Rubbing Lotion. U. S. v. 141 Bottles of Muscleflex Rubbing Lotion. Default decree of condemnation and destruction. (F. & D. No. 44677. Sample No. 41996-D.)

The labeling of this product bore false and fraudulent curative and therapeutic claims and it also failed to bear a correct statement of the quantity or proportion of alcohol contained in the article.

On January 13, 1939, the United States attorney for the Western District of Pennsylvania, acting upon a report by the Secretary of Agriculture, filed in the district court a libel praying seizure and condemnation of 141 bottles of Muscleflex Rubbing Lotion at Philadelphia, Pa.; alleging that the article had been shipped in interstate commerce on or about October 21, 1938, by Beacon Laboratories, Inc., from Dover, Del.; and charging misbranding in violation of the Food and Drugs Act as amended. The article was labeled in part: (Bottle) "15% Alcohol."

Analysis showed that it consisted essentially of alcohol (10.3 percent by volume), oil of turpentine, camphor, a resin such as capsicum resin, a gum, and water.

The article was alleged to be misbranded in that its package label failed to bear a statement of the quantity or proportion of alcohol contained in it since the statement of alcohol made was incorrect. It was alleged to be misbranded further in that the following statements appearing on the bottle label and in a circular shipped with it, regarding its curative or therapeutic effects, were false and fraudulent: (Bottle) "For * * * Relief of Myalgia, Lumbago, Rheumatic & Arthritis Manifestations. Remove Stiffness, Excellent Relief For * * * Sore * * * Aching Feet & After Fractures or Broken Bones"; (circular) "Muscular pains and aches, which are caused by any of the many following manifestations. Rheumatism: A constitutional disease marked by pains in joints or muscles, usually recurrent, and often due to exposure. Arthritis: Gout or any joint inflammation. Acute marked by pain, heat, redness, and swelling. Neuritis: Inflammation of a nerve. Myalgia: * * * Muscular pain. Lumbago: * * * Neuralgia of the loins. Myositis: Inflammation of a muscle. Neuralgia: Pain in nerves. * * * For * * * Relief of Myalgia, Lumbago, Rheumatic & Arthritis Manifestations. Remove Stiffness, Excellent Relief for * * * Sore, * * * Aching Feet & After Fractures or Broken Bones * * * For every ailment, there is a cause, every cause has its effect. For every cause and effect there is a remedy! Muscleflex Offers almost immediate relief in cases of Rheumatism, Arthritis, Neuritis, Myalgia, Lumbago, Neuralgia, * * * and Myositis manifestations. * * * Its penetrating power is remarkable. It relieves almost instantaneously because of

its Medicinal ingredients, it breaks up inflammation, causes renewal of a new blood supply, and therefore scatters pain and drives it completely from the system Nature's way. * * * for any cutaneous surface pains of Throat, Chest or Back. In chronic cases * * *."

On October 17, 1939, the claimant having withdrawn its claim and answer, judgment of condemnation was entered and the product was ordered destroyed.

GROVER B. HILL, *Acting Secretary of Agriculture.*

30973. Misbranding of Purina Nik-Tonik. U. S. v. 35 Packages of Nik-Tonik. Default decree of condemnation and destruction. (F. & D. No. 45416. Sample No. 63299–D.)

The labeling on this veterinary product bore false and fraudulent curative or therapeutic claims.

On June 1, 1939, the United States attorney for the Eastern District of Illinois, acting upon a report by the Secretary of Agriculture, filed in the district court a libel praying seizure and condemnation of 35 packages of Nik-Tonik at East St. Louis, Ill.; alleging that the article had been shipped in interstate commerce on or about December 6, 1938, by the Ralston Purina Co. from St. Louis, Mo.; and charging misbranding in violation of the Food and Drugs Act as amended.

Analysis showed that the article consisted essentially of plant material, including tobacco and nux vomica, compounds of calcium, sodium, zinc, iron, and magnesium, phenolsulfonates, sulfates, and small proportions of a copper compound and sand, flavored with anise.

The article was alleged to be misbranded in that the following statements appearing in the labeling were statements regarding its curative or therapeutic effect and were false and fraudulent: "Nik-Tonik A Tonic And Roundworm Treatment for Chickens and Turkeys * * * How To Use Purina Nik-Tonik For Its Conditioning and Tonic Effect on Chickens and Turkeys * * * For birds that are out of condition, off feed, or generally sluggish, mix 2 lbs. of Purina Nik-Tonik with each 70 lbs. of all-mash feed. * * * After 3 weeks of age, if a tonic for young chicks or poults is needed, mix 2 lbs. of Nik-Tonik with 70 lbs. of starting mash. Keep this mixture before the birds as long as the condition indicates it is necessary. How to Use Purina Nik-Tonik As A Flock treatment For Large Roundworms (Ascarids) In Chickens and Turkeys Young birds frequently become infested with Large roundworms (ascarids), which rob them of food, lower their vitality, and retard proper development. Control by flock treatment with Purina Nik-Tonik at monthly intervals through the early growing period reduces the number of these worms and improves the condition of birds."

On July 13, 1939, claimants having withdrawn their appearances and answers, judgment of condemnation was entered and the product was ordered destroyed.

GROVER B. HILL, *Acting Secretary of Agriculture.*

30974. Misbranding of Twin-Tips. U. S. v. 416 Boxes and 768 Boxes of Applicators of Twin-Tips. Default decree of condemnation and destruction. (F. & D. Nos. 44494, 44495. Sample Nos. 44582–D, 44583–D.)

This product had been shipped in interstate commerce and remained unsold and in the original packages. At the time of examination it was found to be contaminated with viable micro-organisms. One lot was labeled to indicate that it contained an appreciable amount of boric acid; whereas it contained but a trace of boric acid.

On December 9, 1938, the United States attorney for the District of New Jersey, acting upon a report by the Secretary of Agriculture, filed in the district court libels praying seizure and condemnation of 416 and 768 boxes of Twin-Tips at Newark, N. J. (libel against 768 boxes amended July 5, 1939); alleging that the article had been shipped in interstate commerce on or about March 21 and September 7, 1938, by Williams Co. from New York, N. Y.; and charging adulteration and misbranding in violation of the Food and Drugs Act.

The article was alleged to be adulterated in that its purity fell below the following professed standard or quality under which it was sold, (first shipment, carton) "Sanitary," "Borated"; (leaflet) "Twin-Tips are manufactured from highest grade sterilized cotton under a process that assures you the most sanitary swab obtainable" and "Twin-Tips are * * * borated"; (second shipment, carton) "There are many uses for Twin-Tips; for the baby, sick room, medicine chest * * * applying medication to * * * cuts

* * * etc.," since it was not sterile but was contaminated with viable micro-organisms and the first shipment contained but a mere trace of boric acid.

Misbranding was alleged in that the following statements were false and misleading when applied to an article which was not sterile but was contaminated with viable micro-organisms and one lot of which contained but a mere trace of boric acid: (First shipment, carton) "Borated," (circular) "Twin-Tips are manufactured from highest grade sterilized cotton under a process that assures you the most sanitary swab obtainable. * * Twin-Tips are made and packed by machine without the touch of hand and are borated by a special process"; (second shipment, carton) "There are many uses for Twin-Tips; for the baby, sick room, medicine chest * * * applying medication to * * * cuts * * * etc."

On October 13, 1939, no claimant having appeared, judgments of condemnation were entered and the product was ordered destroyed.

GROVER B. HILL, *Acting Secretary of Agriculture.*

30975. Misbranding of Claassen Health Yeast. U. S. v. National Yeast Co., Inc., George C. Claassen, Carl C. Claassen, and Frank C. Burk. Pleas of nolo contendere. Defendants each fined $100 and costs. Payment of fines and costs imposed on individuals suspended. (F. & D. No. 40783. Sample Nos. 31738-C, 31739-C.)

This product bore in its labeling false and fraudulent curative and therapeutic claims. It also was represented to consist wholly of yeast, whereas it consisted in part of ingredients other than yeast.

On June 22, 1938, the United States attorney for the Northern District of Ohio, acting upon a report by the Secretary of Agriculture, filed in the district court an information against the National Yeast Co., Inc., Findlay, Ohio, and George C. Claassen, Carl C. Claassen, and Frank C. Burk, officers of the corporation, alleging shipment by said defendants in violation of the Food and Drugs Act on or about June 5, 1937, from the State of Ohio into the State of Tennessee of a quantity of Claassen Health Yeast that was misbranded.

Biological tests showed that the article contained less than 2 International Units of vitamin B_1, not more than 50 U. S. P. units of vitamin A, and approximately 10 U. S. P. units of vitamin D per gram. Microscopical examination showed the presence of the following ingredients: Ground corn and cornstarch, wheat tissues (bran), and starch, embryo tissues (germ) apparently from cereals, yeast cells, crystalline sucrose (sugar), crystalline dextrose hydrate (corn sugar), and a trace of hop tissues.

The article was alleged to be misbranded in that certain statements, designs, and devices regarding its therapeutic and curative effects appearing on the cartons and circulars falsely and fraudulently represented that it was effective as a health yeast; as conducive to better health and a clear skin; as a treatment, remedy, and cure for indigestion, acid stomach, bad breath, piles, skin blemishes, diarrhoea, stunted growth, loss of weight, loss of appetite, malnutrition, anemia, diabetes, nervousness, mental disturbances, sleeplessness, low vitality, general rundown feeling, tuberculosis, decaying teeth and other indications of vitamin deficiency; effective to promote growth, appetite, and digestion; to increase vitality, and to protect against all infections, notably of the eyes, air passages, and intestinal tract; effective to resist formation of stones in kidneys and bladder; to insure proper digestion and assimilation and discharge of waste matter, to tone muscles and nerves of the digestive system, to relieve constipation and its many serious consequences, and to insure to mothers normal reproduction and lactation; effective as a treatment, remedy, and cure for malformation of teeth and general muscular weakness in children, and to maintain healthful bone and tooth conditions in adults; effective to protect against alimentary disturbances, diarrhoea, skin blemishes, soreness of tongue and mouth, and nervous and mental disorders; effective to produce normal blood and enzymes required by nature for proper digestion and other chemical processes within the body; effective as a builder; effective to aid such disorders as impure blood and nerve troubles caused by lack of sufficient vitamins; effective to tone up flabby muscles, weak nerves and over-worked glands; to correct conditions caused by vitamin deficiency, and numberless ailments both ordinary and serious from this cause; and effective to restore a natural condition.

It was alleged to be misbranded further in that the statement "Yeast," appearing in the circular and on the carton, was false and misleading since

it represented that the article consisted wholly of yeast; whereas it did not so consist but did consist in part of ingredients other than yeast.

On September 28, 1939, pleas of nolo contendere having been entered on behalf of the defendants, the court entered judgment finding the defendants guilty as charged. The National Yeast Co. was sentenced to pay a fine of $100 and costs. Each of the three individual defendants was sentenced to pay a fine of $100 and costs, but payment of fines imposed on the individuals was suspended.

GROVER B. HILL, *Acting Secretary of Agriculture.*

30976. Alleged adulteration and misbranding of Adrenapit (solution epinephrine chloride 1:1000), solution of pituitary extract, and suprarenals. U. S. v. Harvey-Pittenger Co. Tried to the court without a jury. Judgment of not guilty. (F. & D. No. 39737. Sample Nos. 8226–C to 8229–C, incl.)

Action was instituted in this case on the charge that the products failed to conform to the standard established by the United States Pharmacopoeia or by the National Formulary, and that their potency was below that declared on the labels.

On July 22, 1937, the United States attorney for the Eastern District of Pennsylvania, acting upon a report by the Secretary of Agriculture, filed in the district court an information against the Harvey-Pittenger Co., a corporation, Philadelphia, Pa., alleging shipment by said company in violation of the Food and Drugs Act on or about August 4, 1936, from the State of Pennsylvania into the State of North Carolina, of quantities of the above-named drugs which were adulterated and misbranded.

The Adrenapit (solution epinephrine chloride 1:1000) was alleged to be adulterated in that it was sold under and by a name recognized in the United States Pharmacopoeia but differed from the standard of strength, quality, and purity as determined by the test laid down in the pharmacopoeia official at the time of investigation in that it contained not more than 67 percent of the potency required for solution of epinephrine hydrochloride prescribed in the pharmacopoeia and its standard of strength, quality, and purity was not declared on the container. It was alleged to be adulterated further in that its strength and purity fell below the professed standard of strength and quality under which it was sold in that it was represented to be solution of epinephrine chloride 1:1000; whereas it was not solution epinephrine chloride of the potency 1:1000. It was alleged to be misbranded in that the statements (carton and bottle), "Solution Epinephrin Chloride 1:1000 Physiologically Standardized. A * * * physiologically standardized solution of the isolated blood-pressure-raising principle of the suprarenal glands. Adrenapit is * * * A Potent, Uniform, Dependable Preparation," (booklet) "(Solution Epinephrine Chloride 1:1000) A * * * Potent, Uniform Dependable Standardized solution of the blood-pressure-raising principle of the Suprarenal Gland * * * Adrenapit * * * is a * * * solution of the isolated blood-pressure-raising principle of the suprarenal glands. * * * It is adjusted to a definite physiologic activity by its quantitative effect on the blood pressure of dogs as compared with a standard. * * * A potent, Uniform, Dependable, Preparation. * * * it is of definite strength," were false and misleading since the article was not a solution of epinephrine chloride of strength 1:1000, it was not physiologically standardized; it was not a physiologically standardized solution of the isolated blood-pressure-raising principle of the suprarenal glands, it was not a potent, uniform, dependable preparation, and it was not of definite strength, in that it was a preparation materially deficient in potency.

The solution of pituitary extract was alleged to be adulterated in that it was sold under a name recognized in the United States Pharmacopoeia but differed from the standard of strength, quality, and purity as determined by the tests laid down in the said pharmacopoeia in that 1 cubic centimeter of the article produced an activity upon the isolated uterus of the virgin guinea pig corresponding to less than 80 percent of that produced by 0.005 gram of the standard powdered posterior pituitary, namely, an activity corresponding to 45 percent of that produced by 0.005 gram of the standard powdered posterior pituitary; whereas the pharmacopoeia provides that 1 cc. of solution pituitary extract shall produce an activity upon the isolated uterus of the virgin guinea pig corresponding to not less than 80 percent of that produced by 0.005 gram of standard powdered posterior pituitary. It was alleged to be misbranded in that the statements (carton and bottle), "Solution of Pituitary Extract. A * * * solution of the extract of the posterior lobe of

the Pituitary Gland * * * Physiologically Standardized," and (carton only) "Specify Harvey-Pittenger * * * Highest Potency * * * Including * * * Physiologically Standardized * * * Endocrine Substances," were false and misleading in that the article was not solution of pituitary extract; was not a solution of the extract of the posterior lobe of the pituitary gland, was not physiologically standardized, was not of the highest potency, and did not include physiologically standardized endocrine substances, in that the article was a preparation materially deficient in potency.

The suprarenals were alleged to be adulterated in that they were sold under a name recognized in the National Formulary but differed from the standard of strength, quality, and purity as determined by the test laid down in said formulary in that they yielded less than 0.8 percent of epinephrine, namely, 0.5 percent of epinephrine, equivalent to 5 milligrams in 1 gram of the article; whereas the National Formulary provides that suprarenal shall yield not less than 0.8 percent of natural epinephrine of glandular origin. They were alleged to be misbranded in that the statements, (carton and bottle) "Suprarenals Desiccated. One part represents about six parts of fresh glands. Physiologically Standardized so that 1 gm. contains the equivalent of 10 mgm. Epinephrin" and "Uniform * * * preparations are assured by the application of every known chemical and biological method of Standardization," (carton) "Specify Harvey-Pittenger * * * Highest-Potency * * * Including * * * Physiologically Standardized * * * Endocrine Substances," were false and misleading in that the article was not suprarenals desiccated, one part thereof did not represent six parts of fresh glands, it was not physiologically standardized so that 1 gram contained the equivalent of 10 milligrams of epinephrine, it was not standardized by every known chemical and biological method, it was not of the highest potency and did not include physiologically standardized endocrine substances, and in that it was a preparation materially deficient in potency.

On December 18, 1939, a plea of not guilty having been entered on behalf of the defendant and a jury having been waived, the case came on for trial before the court. Evidence was introduced on behalf of the Government and of the defendant, at the conclusion of which the court entered a judgment of not guilty.

GROVER B. HILL, *Acting Secretary of Agriculture.*

30977. Misbranding of Sodasal. U. S. v. Harry Enkel (Sodasal Laboratories). Plea of guilty. Sentence of 1 year suspended and defendant placed on probation for 3 years. Fine of $100 also imposed. (F. & D. No. 42732. Sample Nos. 42944–D, 42971–D, 43181–D, 52224–D.)

The labeling of this product bore false and fraudulent representations regarding its curative and therapeutic effects.

On November 14, 1939, the United States attorney for the Eastern District of Michigan, acting upon a report by the Secretary of Agriculture, filed in the district court an information against Harry Enkel, trading as the Sodasal Laboratories, Detroit, Mich., alleging shipment by said defendant within the period from on or about January 14 to on or about March 4, 1939, from the State of Michigan into the State of Pennsylvania of quantities of Sodasal which was misbranded.

Analysis of a sample taken from one of the shipments showed that it was a reddish liquid consisting largely of sugar and water, containing aminopyrine (approximately 8.8 grains per fluid ounce), salicylates of sodium and potassium (equivalent to approximately 33.5 grains per fluid ounce as sodium salicylate), citrates and bicarbonates of sodium and potassium, together with a suspension of magnesium and calcium salts. Analysis of samples taken from the other shipments showed that they were of substantially the same composition.

The article was alleged to be misbranded in that statements, designs, and devices appearing in its labeling, regarding its curative and therapeutic effects, falsely and fraudulently represented that it was effective as an alkaline treatment (in some shipments as an "anti-acid treatment"); effective as a treatment for rheumatic pains, aching muscles, lumbago, and simple, non-fever grippy discomfort; effective as an anti-rheumatic anodyne, diuretic, anti-acid and alkalizer; effective to give prompt relief from pain, knife-like pain, racking pain and rheumatoid suffering; to flush the kidneys; to expel uric acid, poisonous toxins and other impurities; to double the kidney flow and to fight blood acidity; effective as a treatment of serious ailments which often develop into kidney, blood, and heart trouble; effective in the treatment of stiffness, soreness, swell-

ing or shrinkage in muscles and joints; effective to bring freedom from pain and to relieve torturing pains and agony; and effective as a treatment for advanced (chronic) and recurring cases.

The article was also charged to be misbranded in violation of the Federal Food, Drug, and Cosmetic Act, as reported in notice of judgment No. 78 published under that act.

On December 4, 1939, a plea of guilty having been entered, the court sentenced the defendant to 1 year's imprisonment and imposed a fine of $100 for violation of both acts. The prison sentence was suspended and the defendant was placed on probation for 3 years.

GROVER B. HILL, *Acting Secretary of Agriculture.*

30978. Misbranding of Prescription A Compound, Anti-Rheumatic Fever Compound, Camfo-Phenol Lotion, Astringent Compound, Alterative Compound, Alkaline Laxative, Cascara Compound Tablets, Aromatic Cascara Sagrada, Medicated Discs, Eye Drops, Tablets Iron Tonic Compound, Liquid Iron Tonic Compound, Pepsin and Acid Compound, Pleasant Laxative Wafers, Quinine Compound Tablets, Anti-Rheumatic Ointment, Antacid Tablets, Astringent Mouth Wash and Gargle. U. S. v. Modern Drugs, Inc. Plea of guilty. Fine, $555. (F. & D. No. 42668. Sample Nos. 16831–D, 16844–D, 16847–D, 16848–D, 16849–D, 16860–D, 16862–D to 16865–D, incl., 16867–D, 16869–D, 16870–D, 16872–D, 16873–D, 16877–D, 16878–D, 16879–D, 16880–D, 16883–D, 16884–D, 17335–D, 17337–D, 17338–D, 34202–D, 34211–D, 34212–D, 34213–D.)

The labeling of these products bore false and fraudulent representations regarding their curative and therapeutic effectiveness. Certain of the products also bore false and misleading representations as stated hereinafter.

On July 22, 1939, the United States attorney for the Northern District of West Virginia, acting upon a report by the Secretary of Agriculture, filed in the district court an information against Modern Drugs, Inc., Philippi, W. Va., alleging shipment by said defendant within the period from on or about October 18, 1937, to on or about June 2, 1938, from the State of West Virginia into the States of Maryland and Virginia of quantities of the above-named drug products which were misbranded in violation of the Food and Drugs Act as amended.

Analysis of Prescription A Compound showed that it consisted essentially of extracts of plant drugs, including an alkaloid-bearing drug, sodium salicylate, alcohol, sugar, and water. Two of the three shipments of this product were alleged to be misbranded in that certain statements in the labeling regarding its therapeutic and curative effects falsely and fraudulently represented that it was effective as a treatment in fever temperature and pneumonia. The third shipment of this product was alleged to be misbranded in that certain statements in the labeling regarding its therapeutic and curative effects falsely and fraudulently represented that it was effective as a treatment in fever temperature and summer flu; effective as a first aid in stopping any emergency fever; effective to break up an emergency fever which otherwise might "run into" pneumonia; effective as a treatment in every emergency fever; effective for the treatment and prevention of acute childhood fevers and measles, acute infectious fevers, scarlet fever, mumps, German measles, chicken-pox, and other acute childhood fevers; effective to promote free sweating and to help patient to "break out" fully; effective for the treatment and prevention of respiratory infections, flu, bronchitis, grippe, pneumonia, laryngitis, croup, bronchopneumonia, lobar pneumonia, pleurisy, influenza, and tonsillitis; effective to abort or "break up" serious conditions that may come from colds; and effective to reduce fever temperature and break up the cold before it becomes serious.

Analysis of the Anti-Rheumatic Fever Compound showed that it consisted essentially of extracts of plant drugs including an alkaloid-bearing drug, small proportions of sodium salicylate, potassium acetate, potassium iodide, alcohol, sugar, and water. It was alleged to be misbranded in that certain statements in the labeling of one shipment regarding its therapeutic and curative effects, falsely and fraudulently represented that it was effective as a treatment for rheumatic fever, rheumatism, and various forms of rheumatism, such as neuralgia, lumbago, muscular aches and pains, and in that of the other shipment that it was effective in the treatment of rheumatic fever and rheumatism.

Analysis of Camfo-Phenol showed that it consisted essentially of camphor, phenol (31.7 percent by weight in one sample and 35.5 percent by weight in the other), alcohol, and iodine. It was alleged to be misbranded in that certain statements in the labeling regarding its therapeutic and curative effects falsely and fraudulently represented that it was effective as a treatment for

infection, wounds, abscesses, boils, carbuncles, chronic sores, burns, scalds, and ulcers including ulcers in syphilis, tuberculosis, and other debilitating diseases; effective to prevent infection and to prevent abscesses from forming; effective as a first aid treatment of ulcer; and effective to give quick relief in first-degree burns and to prevent germs from entering the blood or lymph channels and causing blood poison.

Analysis of the Astringent Compound showed that it consisted essentially of extracts of plant drugs including ginger and nutmeg, small proportions of zinc sulfocarbolate, calcium sulfocarbolate, sodium sulfocarbolate, menthol, pepsin, bismuth subnitrate, alcohol, glycerin, sugar, and water, flavored with aromatics and colored with a red dye. It was alleged to be misbranded in that the statement "Contains No Opiates or Other Harmful Drugs," borne on the bottle label, was false and misleading since the article contained zinc sulfocarbolate, calcium sulfocarbolate, and sodium sulfocarbolate, ingredients which might be harmful in the dosage recommended in the directions on the label. It was alleged to be misbranded further in that certain statements in the labeling regarding its therapeutic and curative effects falsely and fraudulently represented that it was effective as an intestinal antiseptic; effective as a diarrhea remedy; effective to soothe the irritated intestinal membrane, to stop the absorption of poison and to neutralize the offending toxins; effective for the treatment and prevention of disturbances of the digestive system, inflammation of the stomach (gastritis), ulcer of stomach, duodenal ulcer, gall-bladder disease, inflammation of the intestines (enteritis), appendicitis, gastro-intestinal disorders, digestive disturbances, rectal disorders, piles or hemorrhoids, proctitis, fissure-in-ano or fissure, perirectal abscess, fistula and rectal irritations; and effective to heal irritated intestinal membranes.

Analysis of the Alterative Compound showed that it consisted essentially of potassium iodide, small proportions of an ammonium salt and volatile oils including methyl salicylate, plant extractives including cascara, and an alkaloid-bearing drug, alcohol, sugar, glycerin, and water. It was alleged to be misbranded in that certain statements in the labeling regarding its therapeutic and curative effects falsely and fraudulently represented that it was effective as a treatment in conditions arising from a sluggish system and as a treatment for abscesses, boils, carbuncles, and infections; effective to prevent abscesses from forming; and effective as a tonic.

Analysis of Alkaline Laxative showed that it consisted essentially of extracts of plant drugs including cascara and licorice, sodium bicarbonate, volatile oils (including oil of anise, oil of orange, and a mint oil) alcohol, glycerin, sugar, and water. It was alleged to be misbranded in that the statement, "Improves the action of the bowels without establishing the laxative habit," borne on the bottle label, was false and misleading, since the article would not improve the action of the bowels without establishing the laxative habit, since it contained cascara and licorice, laxative drugs. It was alleged to be misbranded further in that certain statements in the labeling regarding its therapeutic and curative effects falsely and fraudulently represented that it was effective for the treatment and prevention of appendicitis, gastro-intestinal disorders, ulcer of the stomach, digestive disturbances and hives; and effective to keep the stomach sweet.

Analysis of the Cascara Compound Tablets showed that they contained plant material including cascara and podophyllum, aloin, and sodium bicarbonate and were coated with sugar. They were alleged to be misbranded in that certain statements in the labeling regarding their therapeutic and curative effects falsely and fraudulently represented that they were effective for the treatment and prevention of disturbances of the digestive system, inflammation of the stomach (gastritis), ulcer of stomach, duodenal ulcer, gall-bladder disease, inflammation of the intestines (enteritis), appendicitis, gastro-intestinal disorders, digestive disturbances and hives; effective to clean out the bowels; and effective to keep the stomach sweet.

Analysis of the Cascara Sagrada (Aromatic) showed that it consisted essentially of extract of cascara, glycerin, licorice, alcohol, and water, sweetened with saccharin and flavored with oil of anise. It was alleged to be misbranded in that certain statements in the labeling regarding its therapeutic and curative effects falsely and fraudulently represented that it was effective for the treatment and prevention of disturbances of the digestive system, inflammation of the stomach (gastritis), ulcer of the stomach, duodenal ulcer, gall-bladder disease, inflammation of the intestines (enteritis), appendicitis, gastro-intestinal disorders, or digestive disturbances; and effective to keep the stomach sweet.

Analysis of the Medicated Discs showed that they contained small proportions of anesthesin, creosote, volatile oils (including methyl salicylate, menthol, and oil of cubeb), balsam of tolu, elm bark, gum, sugar, and talc, colored with a pink dye. The article was alleged to be misbranded in that certain statements in the labeling regarding its therapeutic and curative effects falsely and fraudulently represented that it was effective for the treatment and prevention of diseases of the eye, ear, nose, and throat; effective for the treatment and prevention of sore mouth, pyorrhea, thrush, and trench mouth; effective to relieve soreness and irritation; and effective as a medication for irritated bronchial tubes.

Analysis of the Eye Drops showed that the article consisted essentially of boric acid (3.9 percent), traces of zinc sulfate, hydrastic alkaloids, and chloretone, flavored with oil of rose and colored with a yellow dye. Bacteriological examination showed that it was not an antiseptic.

It was alleged to be misbranded in that the statement, "Antiseptic," appearing in a booklet which accompanied it, was false and misleading since it was not an antiseptic. It was alleged to be misbranded further in that certain statements in the labeling regarding its therapeutic and curative effects falsely and fraudulently represented that it was effective as a treatment for common irritations of the eyes and eyelids; effective for the prevention and treatment of eye irritation and other infections which are carried to the eyes; and effective as an antiseptic.

Analysis of the Iron Tonic Compound Tablets showed that they contained iron and manganese compounds and plant material (including nux vomica, capsicum, and an emodin-bearing drug such as cascara), coated with sugar, calcium carbonate, and talc. It was alleged to be misbranded in that the statement "Tablets Iron Tonic Compound," borne on the box label, was false and misleading since it represented that the article contained iron as its essential physiologically active ingredient; whereas it contained other physiologically active ingredients, to wit, manganese, and plant material including nux vomica, capsicum, and an emodin-bearing drug such as cascara. It was alleged to be misbranded further in that certain statements in the labeling regarding its therapeutic and curative effects falsely and fraudulently represented that it was effective as a tonic; effective as a treatment for abcesses, boils, carbuncles, infections, hay fever, and eczema; effective to prevent abscesses from forming; effective for the treatment and prevention of disturbances of the blood and circulatory system; and effective to build health, vigor, strength, and endurance.

Analysis of the Liquid Iron Tonic Compound showed that it consisted essentially of extracts of plant drugs including cascara, small proportions of compounds of arsenic, manganese, calcium, and iron, hypophosphites, alcohol, sugar, and water. It was alleged to be misbranded in that the statement "Liquid Iron Tonic Compound," borne on the bottle label, was false and misleading since it represented that the article contained iron as its essential physiologically active ingredient: whereas it did not contain iron as its essential physiologically active ingredient but did contain other physiologically active ingredients, namely, extracts of plant drugs including cascara, and small proportions of compounds of arsenic, manganese, calcium, and hypophosphites. It was alleged to be misbranded further in that certain statements in the labeling regarding its therapeutic and curative effects falsely and fraudulently represented that it was effective as a tonic; effective as a treatment for abscesses, boils, carbuncles, hay fever, eczema, and infections; effective to prevent abscesses from forming; effective for the treatment and prevention of respiratory infections, flu, grippe, bronchitis, pneumonia, laryngitis, croup, broncho-pneumonia, lobar pneumonia, pleurisy, influenza, and disturbances of the blood and circulatory system; effective to prevent recurrences and improve the general health; effective to build up strength and endurance and prevent a relapse; and effective to build health, vigor, strength, and endurance.

Analysis of the Pepsin and Acid Compound showed that it consisted essentially of pepsin, a small proportion of hydrochloric acid, alcohol, glycerin, and water, flavored with aromatics and colored with a red dye. It was alleged to be misbranded in that certain statements in the labeling regarding its therapeutic and curative effects falsely and fraudulently represented that it was effective as a treatment, remedy, and cure for sick stomach and vomiting.

Analysis of the Pleasant Laxative Wafers showed that they contained phenolphthalein (2 grains per tablet), sugar, starch, and aromatics including oil of sassafras. It was alleged to be misbranded in that the statement,

"Pleasant Laxative Wafers * * * Good tasting candy containing a mild * * * laxative," borne on the box label, was false and misleading since it represented that the article was a mild laxative; whereas it contained in each tablet 2 grains of phenolphthalein, which is not a mild laxative. It was alleged to be misbranded further in that certain statements in the labeling regarding its therapeutic and curative effects falsely and fraudulently represented that it was effective for the treatment and prevention of disturbances of the digestive system, inflammation of the stomach (gastritis), ulcer of stomach, duodenal ulcer, gall-bladder disease, inflammation of the intestines (enteritis), and appendicitis; effective as a treatment, remedy, and cure for gastro-intestinal disorders and ulcer of the stomach; and effective to keep the stomach sweet.

Analysis of the Quinine Compound Tablets showed that they contained acetanilid, quinine sulfate, camphor, aloin, resin of podophyllum, and sodium bicarbonate, coated with calcium and colored with a pink dye. It was alleged to be misbranded in that certain statements in the labeling regarding its therapeutic and curative effects falsely and fraudulently represented that it was effective for the treatment and prevention of respiratory infections, flu, grippe, bronchitis, pneumonia, laryngitis, croup, broncho-pneumonia, lobar pneumonia, pleurisy, and influenza; and effective to keep nose and throat dry, and to check excessive sweating.

Analysis of the Anti-Rheumatic Ointment showed that it contained sodium salicylate, methyl salicylate, capsicum, turpentine, volatile oils (including camphor, menthol, and oil of cajuput), incorporated in a petrolatum base. It was alleged to be misbranded in that certain statements in the labeling regarding its therapeutic and curative effects falsely and fraudulently represented with respect to both shipments that it was effective as an anti-rheumatic ointment; effective as a relief of pain and swellings; effective for the treatment of congestion of the lungs, pneumonia, muscular soreness, aches and pains, simple neuritis, simple neuralgia, lumbago, myalgia, and other similar forms of what is commonly known as rheumatism; effective to aid in the restoration of the affected parts to normal; and with respect to one of the shipments that it was also effective for the treatment and prevention of respiratory infections, flu, grippe, bronchitis, pneumonia, laryngitis, croup, broncho-pneumonia, lobar pneumonia, pleurisy, and influenza; and effective for the treatment of tightness in the chest.

Analysis of the Antacid Tablets showed that they contained calcium phosphate, calcium carbonate, small proportions of a protein-like material, and saccharin, and starch, flavored with aromatics. It was alleged to be misbranded in that certain statements in the labeling regarding its therapeutic and curative effects falsely and fraudulently represented that it was effective to aid protein digestion; effective to relieve heartburn, sour stomach, flatulence, and gas; effective as a treatment for indigestion, gastro-intestinal disorders, ulcer of the stomach and digestive disturbances; effective to aid the stomach in digestion; effective for the treatment and prevention of disturbances of the digestive system, inflammation of stomach (gastritis), ulcer of stomach, duodenal ulcer, gall-bladder disease, inflammation of the intestines (enteritis), and appendicitis; and effective to keep the stomach sweet.

Analysis of the Astringent Mouth Wash and Gargle showed that it consisted essentially of boric acid, sodium benzoate, volatile oils (including thymol, menthol, eucalyptol, and oil of wintergreen), tannic acid, alcohol, and water. It was alleged to be misbranded in that certain statements in the labeling regarding its therapeutic and curative effects falsely and fraudulently represented that it was effective for the treatment and prevention of diseases of the eye, ear, nose and throat, sore mouth, pyorrhea, thrush, trench mouth, and other common irritations of the mouth; effective as an antiseptic throat gargle for tonsillitis; and effective as an antiseptic mouth wash.

The information charged that Camfo-Phenol was also misbranded in violation of the Federal Caustic Poison Act, reported in notices of judgment published under that act.

On November 22, 1939, a plea of guilty was entered on behalf of the defendant. On December 22, 1939, the court imposed a fine of $555 for violation of the Food and Drugs Act and a fine of $30 for violation of the Federal Caustic Poison Act.

GROVER B. HILL, *Acting Secretary of Agriculture.*

30979. Adulteration and misbranding of Acetodyne Tablets. U. S. v. Glens Falls Pharmacal Co., Inc., and Frederick T. Comstock. Pleas of guilty. Corporation fined $75; individual defendant fined $25. (F. & D. No. 42683. Sample No. 30236–D.)

This product was represented to contain 2 grains of acetophenetidin per tablet, whereas it contained no acetophenetidin. It did, however, contain acetanilid which was not declared on the label.

On October 16, 1939, the United States attorney for the Northern District of New York, acting upon a report by the Secretary of Agriculture, filed in the district court an information against the Glens Falls Pharmacal Co., Inc., and Frederick T. Comstock, an officer of the said corporation, alleging shipment by them on or about July 2, 1938, from the State of New York into the State of Pennsylvania of a quantity of Acetodyne Tablets that were adulterated and misbranded.

The article was alleged to be adulterated in that its strength and purity fell below the professed standard and quality under which it was sold in that each of the tablets was represented to contain 2 grains of acetophenetidin; whereas the tablets contained no acetophenetidin but did contain 1.91 grains of acetanilid, a drug product from which acetophenetidin is derived.

It was alleged to be misbranded in that the statement "Acetphenetidin 2 gr.," borne on the bottle label, was false and misleading in that the statement represented that the tablets contained 2 grains of acetophenetidin; whereas the tablets contained no acetophenetidin but did contain 1.91 grains of acetanilid. It was alleged to be misbranded further in that it contained acetanilid and the label on the package failed to bear a statement of the quantity or proportion of acetanilid that it contained.

On December 2, 1939, pleas of guilty were entered on behalf of the defendants and the court imposed a fine of $75 against the Glens Falls Pharmacal Co., Inc., and a fine of $25 against Frederick T. Comstock.

GROVER B. HILL, *Acting Secretary of Agriculture.*

30980. Adulteration and misbranding of cod-liver oil. U. S. v. 186 Bottles of Cod-Liver Oil. Default decree of condemnation and destruction. (F. & D. No. 45467. Sample No. 39911–D.)

This product was represented to contain 150 U. S. P. units of vitamin D per gram, whereas it contained not more than 110 U. S. P. units of vitamin D per gram.

On June 8, 1939, the United States attorney for the Western District of Washington, acting upon a report by the Secretary of Agriculture, filed a libel against 186 bottles of cod liver oil at Seattle, Wash.; alleging that the article had been shipped in interstate commerce on or about January 18 and October 13, 1938, by McKesson & Robbins, Inc. (Blumauer-Frank Division) from Portland, Oreg.; and charging adulteration and misbranding in violation of the Food and Drugs Act. It was labeled in part: "Purola Guaranteed Quality Norwegian Cod Liver Oil * * * (Blumauer-Frank Drug Company) Portland, Oregon."

The article was alleged to be adulterated in that its strength and purity fell below the professed standard under which it was sold, namely, "150 vitamin 'D' units U. S. P. X 1934 Per Gram," since it contained less than 150 such units of vitamin D per gram.

It was alleged to be misbranded in that the statement on the label, "Biologically Tested Standardized Certified Content * * * 150 Vitamin 'D' units U. S. P. X 1934 Per Gram," was false and misleading as applied to the article since it contained less than 150 U. S. P. units of vitamin D per gram.

On February 9, 1940, no claimant having appeared, judgment of condemnation was entered and the product was entered destroyed.

GROVER. B. HILL, *Acting Secretary of Agriculture.*

30981. Adulteration and misbranding of Ethacaine. U. S. v. Seydel Chemical Co. and Herman Seydel. Pleas of guilty. Total fines, $100. (F. & D. No. 42619. Sample No. 12424–D.)

This product did not possess the antiseptic properties claimed and was not of the composition indicated by its labeling. The labeling also bore false and fraudulent curative and therapeutic claims.

On March 2, 1939, the United States attorney for the District of New Jersey, acting upon a report by the Secretary of Agriculture, filed in the district court an information against the Seydel Chemical Co., a corporation, Jersey City, N. J., and Herman Seydel, an officer of the corporation, alleging shipment by

said defendants on or about March 15, 1938, from the State of New Jersey into the State of New York, of a quantity of Ethacaine which was adulterated and misbranded.

Analysis showed that the article consisted essentially of a mixture of benzoic acid and benzocaine incorporated in a petrolatum base, with oxyquinoline present. Bacteriological examination showed that it was not an antiseptic when used as directed.

The article was alleged to be adulterated in that its strength fell below the professed standard of quality under which it was sold since it was represented to be an antiseptic, whereas it was not an antiseptic.

Misbranding was alleged in that the following statements in the labeling, (circular) "Having Powerful Antiseptic Properties * * * powerful antiseptic effect, An ointment exhibiting * * * characteristics of antisepsis * * * In Ethacaine, 'Seydel' these * * * therapeutic effects are natural properties of the drug, therefore the addition of irritating antiseptics, such as phenol, bi-chloride, * * * is obviated. * * * the bactericidal effect * * * The antiseptic action of Ethacaine is of extreme value * * * antiseptic action is desired. Ethacaine, 'Seydel' applied to agar plates innoculated with staphylococcus aureus and incubated for 24 hours, shows wide inhibitory zone indicating good diffusion and marked antiseptic action. Ethacaine Ointment, 'Seydel' applied to agar plates innoculated with staphylococcus aureus and incubated for 24 hours, also shows wide inhibitory zone indicating good diffusion and marked antiseptic action," and (carton and tube) "Antiseptic," were false and misleading since the said statements represented that the article was antiseptic; whereas it was not an antiseptic. It was alleged to be misbranded further in that the statement, "Ethacaine * * * it is a benzoyl compound chemically described as benzoyl-para-amino-ethyl-phenyl-carboxylate, which of itself is antiseptic," appearing in the circular, was misleading in that the article did not consist of the chemical compound indicated by the said statement but did consist essentially of a mixture of benzoic acid, benzocaine, and petrolatum. It was alleged to be misbranded further in that certain statements regarding its therapeutic and curative effects, borne on the tube and carton labels and in the circular, falsely and fraudulently represented that it was effective for the treatment of ulcers, skin eruptions, and dermatological conditions; and for the relief of pain in ulcers; effective as a treatment, remedy, and cure for ulcers and superficial carcinomata; effective to ease the pain, assist in keeping the ulcer clean, and promote healthy cell growth; effective for the relief of itching of eczema and to cause better and quicker healing of the lesions; and effective as an antiseptic in preoperative and postoperative treatment.

On January 26, 1940, pleas of guilty were entered on behalf of defendants and the court imposed a fine of $50 against each.

GROVER B. HILL, *Acting Secretary of Agriculture.*

30982. Adulteration and misbranding of sutures. U. S. v. 60 Cartons of Sutures. Default decree of condemnation and destruction. (F. & D. No. 44986. Sample Nos. 36566–D, 36567–D, 36568–D.)

This product had been shipped in interstate commerce and remained unsold and in the original packages. At the time of examination it was found to be contaminated with viable micro-organisms.

On or about March 24, 1939, the United States attorney for the District of Kansas, acting upon a report by the Secretary of Agriculture, filed a libel against 60 cartons of sutures at Halstead, Kans.; alleging that the article had been shipped in various shipments on or about January 10, 16, and 31, 1939, by the Laboratory of the Ramsey County Medical Society from St. Paul, Minn.; and charging that it was adulterated and misbranded in violation of the Food and Drugs Act.

It was alleged to be adulterated in that its purity fell below the professed standard or quality under which it was sold in that it was labeled "Pyoktanin Catgut," which implied that it was a sterile article; whereas it was not sterile but was contaminated with viable micro-organisms.

Misbranding was alleged in that the statements, "Plain Pyoktanin Catgut * * * Directions: Tear the envelope and drop the contents into a sterile solution; soak the strand before application to make it pliable and to prevent breaking at the knot," were false and misleading since they created the impression that the article was sterile catgut suitable for surgical use; whereas it was not sterile and was not suitable for surgical use.

On May 31, 1939, no claimant having appeared, judgment of condemnation was entered and the product was ordered destroyed.

GROVER B. HILL, *Acting Secretary of Agriculture.*

30983. Misbranding of McMillan's Nomoppin. U. S. v. William Cicero McMillan (McMillan Drug Co.). (Two cases). Pleas of guilty. Fine of $300 in one case and $200 in the other. Payment of fine deferred and sentence suspended in latter case. (F. & D. Nos. 40810, 42734. Sample Nos. 54356–C, 54357–C, 25196–D.)

The labeling of this product bore false and fraudulent representations regarding its curative and therapeutic effectiveness.

On April 23, 1938, the United States attorney for the Eastern District of South Carolina, acting upon a report by the Secretary of Agriculture, filed an information against William Cicero McMillan, trading as the McMillan Drug Co., Columbia, S. C. On July 12, 1939, the United States attorney filed a second information against the same defendant. The informations alleged shipment in violation of the Food and Drugs Act as amended, on or about October 18, 1937, and July 15, 1938, from the State of South Carolina into the States of Georgia and Florida, respectively, of quantities of McMillan's Nomoppin that was misbranded.

Analysis showed that the article consisted essentially of a solution of a mixture of arsenous oxide and potassium carbonate partly combined.

The article was alleged to be misbranded in that statements on the bottle labels falsely and fraudulently represented that it possessed curative and therapeutic efficacy as an internal remedy and preventive for chicken sorehead, and as a tonic. Portions of the article were alleged to be misbranded further in that statements in a circular shipped therewith falsely and fraudulently represented that the article was effective as a treatment, remedy, and cure for chicken sorehead, and as an aid to egg production; and effective to hasten molting, brighten plumage, and restore normal flesh and vigor to flock having sorehead.

On November 8, 1939, the defendant entered pleas of guilty in the two cases and the court imposed a fine of $300 for the violations charged in the first information, and a fine of $200 for the violations charged in the second. Payment of fine was deferred and sentence was suspended in the latter case.

GROVER B. HILL, *Acting Secretary of Agriculture.*

30984. Adulteration and misbranding of fluidextract of digitalis. U. S. v. One Bottle of Fluidextract of Digitalis. Default decree of condemnation and destruction. (F. & D. No. 45155. Sample No. 58450–D.)

Test of this product showed that it possessed a potency of not more than 44 percent of that indicated by its labeling.

On April 7, 1939, the United States attorney for the Middle District of Tennessee, acting upon a report by the Secretary of Agriculture, filed in the district court a libel praying seizure and condemnation of one bottle of fluidextract of digitalis at Nashville, Tenn.; alleging that the article had been shipped in interstate commerce on or about January 11, 1939, by Eli Lilly & Co. from Indianapolis, Ind.; and charging adulteration and misbranding in violation of the Food and Drugs Act. The article was labeled in part: "Fluid Extract * * * Digitalis * * * Physiologically Standardized—1 cc. represents 1 Gm. of the dried leaf. * * * Tincture Digitalis, U. S. P. Fl. Ext. Digitalis . . . . . 50 cc. Alcohol . . . . . 325 cc. Water . . . . . 125 cc. Mix."

Adulteration was alleged in that the strength of the article fell below the professed standard as set out on the label under which it was sold since 1 cubic centimeter of the article did not represent 1 gram of dried digitalis leaf, and a mixture of the article with alcohol and water as directed on the label would not result in the production of tincture of digitalis meeting the requirements of the United States Pharmacopoeia for such tincture.

Misbranding was alleged in that the statements quoted on the labeling were false and misleading since 1 cubic centimeter of the article did not represent 1 gram of dried digitalis leaf and a mixture of the article with alcohol and water would not result in tincture of digitalis meeting the requirements of the United States Pharmacopoeia.

On December 28, 1939, no claimant having appeared, judgment of condemnation was entered and the product was ordered destroyed.

GROVER B. HILL, *Acting Secretary of Agriculture.*

30985. Misbranding of Cal-co-cin. U. S. v. George T. Lambert, David Periera, and George D. Lambert (Crescent-Kelvan Co.). Pleas of nolo contendere. Fines, $250. (F. & D. No. 42713. Sample Nos. 29934–D, 34424–D, 34642–D, 34644–D, 34703–D.)

The labeling of this product bore misleading representations regarding its ingredients and false and fraudulent representations regarding its curative and therapeutic effectiveness.

On September 13, 1939, the United States attorney for the Eastern District of Pennsylvania, acting upon a report by the Secretary of Agriculture, filed in the district court an information against George T. Lambert, David Periera, and George D. Lambert, trading as the Crescent-Kelvan Co., a business trust, Philadelphia, Pa., alleging shipment by said defendants in violation of the Food and Drugs Act as amended, within the period from on or about June 11 to on or about October 20, 1938, from the State of Pennsylvania into the States of New Jersey and Maryland, of quantities of Cal-co-cin which was misbranded.

Analysis of a sample taken from one of the shipments showed that it contained 1.85 grains of cinchophen, 2.55 grains of benzoic acid, and 0.47 grains of calcium per capsule. Analyses of samples taken from the remaining shipments showed that they were of substantially the same composition.

The article was alleged to be misbranded in that the statement "Bi-Calcium-Ortho-Benzycin," borne on the bottle label, was false and misleading in that it purported to set forth and indicate the composition of the article; whereas the article contained compounds of cinchophen, a potentially dangerous drug, in amounts varying from 1.5 grains to 2 grains per capsule and said statement gave no indication of the presence in the article of the said compounds of cinchophen. It was alleged to be misbranded further in that the following statements in the labeling were false and misleading in that they would lead the purchaser to believe that the article was a safe and appropriate remedy for the conditions set forth therein; whereas it was not a safe and appropriate remedy for the conditions set forth in said statements but was a dangerous drug: (Bottle label in certain shipments) "For Arthritis, Rheumatoid conditions and Uric Acid Eliminant. Dosage—One capsule four times a day with a full glass of water, after meals and on retiring"; (box label in one shipment) "for Arthritis, Rheumatoid conditions and Uric Acid Eliminant"; (leaflet in one shipment) "Cal-co-cin Clinical reports received warrants us offering the Medical Profession this non-toxic, non-habit forming Chemical Combination for Arthritis, Rheumatoid Conditions and Uric Acid Eliminant Brief Summary and Treatment Rheumatism generally speaking is considered to be of infectious origin, due to various strains of the Streptococci. To understand sensitization of cells is important, for Rheumatism can affect different organs and tissues of the body—as the joints or certain group of muscles. It may also affect the throat, or even some nerve register complaint may be elicited at times. Waste products may not be eliminated properly from the cells, hence the catabolic process being on an increase in its activity. Treatment consists of destroying the various strains of Streptococci; also to free the choked or catabolic cells of their waste material, dissolve and eliminate the Uric Acid and Urates. 'Cal-co-cin' is a chemical derived by the action of Benzoic and Phenyl Cinchonic Acids on Calcium, forming a Calcium-Benzo-Phenyl Cinchonate—(Bi Calcium Ortho-Benzycin.) A Solvent for, also an eliminator of Uric Acid ($C_5H_4N_4O_3$) when the Uric Acid combines with a base and Urates are formed per se, the use of 'Cal-co-cin' for that joint condition has given most gratifying results. 'Cal-co-cin' has antiseptic value as well and is tolerated most favorably by the stomach and intestines; also the liver and Kidneys. Dr. M., Philadelphia, reports in several cases of long standing, very comfortable after one weeks treatment, one case in particular, female age 64, bedfast six weeks, after two weeks treatment with 'Cal-co-cin' very comfortable, better results than from all other medication including injections. Dr. — New Jersey, reports patient after taking fifty 'Cal-co-cin' Capsules, pain and burning had almost ceased, Uric Acid corrected so that patient did not have to get up nights. Dr. A. E. S., Phila., Pa.—used 'Cal-co-cin' in combination with 'Cholax' (Saline laxative) with excellent results, patient much relieved after few doses. Dr. R. E. G., Philadelphia, Pa.—Results from 'Cal-co-cin' very satisfactory, warrants my reordering. Dosage—We suggest one capsule with a full glass of water after each meal and on retiring, can be increased at discretion of physician with perfect safety."

The article was alleged to be misbranded further in that statements in the labeling regarding its curative and therapeutic effects falsely and fraudulently

represented that it was a safe and appropriate remedy for arthritis and rheumatoid conditions and was a safe and appropriate uric acid eliminant; whereas when used as directed, it was not a safe and appropriate treatment but was a dangerous drug in that said article was capable of causing serious, irreparable, or fatal injury to consumers.

Certain of the shipments were also alleged to be misbranded in violation of the Federal Food, Drug, and Cosmetic Act, as reported in notice of judgment No. 77 published under that act.

On December 8, 1939, pleas of nolo contendere were entered on behalf of the defendants. On January 5, 1940, the court imposed fines amounting to $250 for violation of both acts.

GROVER B. HILL, *Acting Secretary of Agriculture.*

30986. Misbranding of Pixine Pile Remedy and Pixine Ointment. U. S. v. Fred R. Lossoe (The Pixine Co.). Plea of guilty. Fine, $75. (F. & D. No. 42715. Sample Nos. 8371–D, 14163–D, 35784–D, 35785–D.)

The labeling of these products bore false and fraudulent representations regarding their curative and therapeutic effectiveness. The labeling of one lot of the Pixine Pile Remedy was further objectionable because of the false and misleading representations that it was guaranteed under the Food and Drugs Act.

On October 16, 1939, the United States attorney for the Northern District of New York, acting upon a report by the Secretary of Agriculture, filed in the district court an information against Fred R. Lossoe, trading as the Pixine Co., Troy, N. Y., alleging shipment by said defendant in violation of the Food and Drugs Act as amended, within the period from on or about January 18 to on or about September 8, 1938, from the State of New York into the States of Illinois and Massachusetts, of quantities of Pixine Pile Remedy and Pixine Ointment that were misbranded.

Analysis showed that the pile remedy consisted essentially of tannic acid, ichthyol, and volatile oils including turpentine, incorporated in a petrolatum and fatty acid base. Analysis of the ointment showed that it consisted essentially of volatile oils including turpentine, origanum oil, and juniper oil, and a small proportion of ichthyol, incorporated in a petrolatum and lanolin base.

One shipment of the pile remedy was alleged to be misbranded in that statements in the labeling regarding its curative and therapeutic effects falsely and fraudulently represented that it was effective as a pile remedy; effective as a treatment, remedy, and cure for internal and external piles, fistula, ulcer or fissure of anus, all inflammatory conditions of the rectum, hemorrhoids and itching, hemorrhoidal and protruding piles; and effective to give immediate relief to any form of piles, to reduce inflammation, and to relieve and cure itching and smarting of the anus. The said shipment was alleged to be misbranded further in that the statement "Fully guaranteed under the Pure Food and Drug Act," contained in a circular shipped with the article, was false and misleading in that it represented that the article had been examined and approved by the Government and that it complied with the Food and Drugs Act of June 30, 1906; whereas it had not been examined and approved by the Government and it did not comply with the said Food and Drugs Act. The remaining shipment of Pixine Pile Remedy was alleged to be misbranded in that statements in the labeling regarding its curative and therapeutic effects falsely and fraudulently represented that it was effective as a pile remedy; effective as a treatment, remedy, and cure for internal and external piles, hemorrhoids, fistula, ulcer or fissure of anus, and all inflammatory conditions of the rectum; effective to give immediate relief and to reduce inflammation; and effective as a relief for rectal ailments.

One shipment of the Pixine Ointment was alleged to be misbranded in that statements in the labeling regarding its curative and therapeutic effects falsely and fraudulently represented that it was effective as a treatment, remedy, and cure for varicose and indolent ulcers, scrofulous and inflammatory swellings, all cuts, contused and lacerated wounds, carbuncles, boils, piles, psoriasis and other inflammatory skin diseases, septic wounds, pneumonia or other inflammatory affections of the chest and abdomen, croup, congestion and inflammation of the respiratory organs, ulcers, bed sores, erysipelas, septic infection, inflammatory affections of the skin and respiratory organs, abscesses, bruised and mangled wounds, infected wounds, scaly skin diseases, eczema, and congestion of throat and chest due to colds; effective as an ideal surgical

dressing for inflammation, congestion, and tissue building; and effective as a poultice for pneumonia or any inflammatory condition. The remaining shipment of the Pixine Ointment was alleged to be misbranded in that statements in the labeling regarding its curative and therapeutic effects falsely and fraudulently represented that it was effective as a treatment, remedy, and cure for boils, infected wounds, all kinds of ulcers, pneumonia, skin diseases, swellings, croup, congestion and inflammation of the respiratory organs, bed sores, erysipelas, septic infection, inflammatory affections of the skin and respiratory organs, varicose ulcers, carbuncles, abscesses, bruised and mangled wounds, inflammatory swellings, psoriasis, scaly skin diseases, eczema, inflammatory skin diseases, and congestion of the throat and chest due to colds; and effective as an ideal surgical dressing for inflammation, congestion, and tissue building.

On December 2, 1939, the defendant entered a plea of guilty and the court imposed a fine of $75.

GROVER B. HILL, *Acting Secretary of Agriculture.*

30987. Adulteration and misbranding of ampuls of calcium chloride and ampuls of sodium salicylate, sodium iodide, and colchicin. U. S. v. American Medical Specialties Co., Inc. Plea of guilty. Fine, $1,200. (F. & D. No. 42672. Sample Nos. 15412–D, 15415–D, 15456–D.)

This case involved ampuls of calcium chloride which differed from the standard established by the National Formulary for such products; and ampuls of sodium salicylate, sodium iodide, and colchicin all but one of which, upon examination, were found to be deficient in sodium salicylate and sodium iodide, the remaining ampul having been found to contain nothing but water.

On September 29, 1939, the United States attorney for the Southern District of New York, acting upon a report by the Secretary of Agriculture, filed in the district court an information against the American Medical Specialties Co., Inc., New York, N. Y., alleging shipment by said company in violation of the Food and Drugs Act on or about March 7, May 16, and July 6, 1938, from the State of New York into the State of Nebraska, of quantities of the above-named drugs that were adulterated and misbranded.

The ampuls of calcium chloride were alleged to be adulterated in that they were sold under a name recognized in the National Formulary but differed from the standard of strength, quality, and purity as determined by the tests laid down therein since they yielded less than 95 percent, namely, not more than 66.1 percent of the labeled amount of calcium chloride; whereas the National Formulary provides that ampuls of calcium chloride shall yield not less than 95 percent of the labeled amount of calcium chloride and the standard of strength, quality, and purity of the articles was not stated on the container. Adulteration was alleged further in that the strength of the article fell below the professed standard and quality under which it was sold, since it was represented to contain 10 percent of calcium chloride; whereas it contained not more than 6.61 percent of calcium chloride.

Misbranding was alleged in that the statement "Ampoules Calcium Chloride 10%" borne on the boxes and on the ampuls was false and misleading since the article contained less than 10 percent of calcium chloride.

The sodium salicylate, sodium iodide, and colchicin was alleged to be adulterated in that its strength fell below the professed standard and quality under which it was sold in that each ampul of the article was represented to contain a solution containing 2 grams (31 grains) of sodium salicylate, 2 grams (31 grains) of sodium iodide, and $\frac{1}{50}$ grain of colchicin; whereas one of the ampuls examined contained no sodium salicylate, no sodium iodide, and no colchicin but did contain water, and the remainder of said ampuls contained a solution containing less sodium salicylate and sodium iodide than the amount represented, those in one shipment having been found to contain not more than 1.02 grams (15.74 grains) of sodium salicylate, not more than 1.2 grams (18.5 grains) of sodium iodide, and those in the remaining shipment having been found to contain not more than 1.04 grams (16.05 grains) of sodium salicylate and not more than 1.09 grams (16.8 grains) of sodium iodide.

The sodium salicylate, sodium iodide, and colchicin was alleged to be misbranded in that the statement, "Ampoules 20 c. c. * * * Sodium Salicylate 2 Gms. (31 grs.) Sodium Iodide 2 Gms. (31 grs.) Colchicin $\frac{1}{50}$ gr.," borne on the boxes and on the ampuls, was false and misleading in that it represented that each ampul of the article contained a solution containing 2 grams of sodium salicylate, 2 grams of sodium iodide, and $\frac{1}{50}$ grain of colchicin; whereas

one ampul was found to contain nothing but water and the remainder of said ampuls contained less sodium salicylate and less sodium iodide than the amount declared.

On February 13, 1940, a plea of guilty was entered on behalf of the defendant and the court imposed a fine of $1,200, i. e., $200 on each of six counts.

GROVER B. HILL, *Acting Secretary of Agriculture.*

30988. Adulteration and misbranding of santal oil capsules. U. S. v. 6,720 5-Minim Capsules, 4,700 5-Minim Capsules, and 840 10-Minim Capsules of Santal Oil. Default decrees of condemnation and destruction. (F. & D. Nos. 42377, 42436, 42437. Sample Nos. 25238–D, 25241–D, 25242–D.)

This product was labeled to indicate that it was oil of santal; whereas it contained a derivative of phthalic acid, a benzyl compound, and terpineol, substances foreign to oil of santal.

On May 13 and 23, 1938, the United States attorney for the Southern District of New York, acting upon reports by the Secretary of Agriculture, filed in the district court libels praying seizure and condemnation of 11,420 5-minim capsules and 840 10-minim capsules of santal oil at New York, N. Y.; alleging that 6,720 5-minim capsules of the article had been shipped in interstate commerce on or about October 29, 1935, by Gelatin Products Co. from Detroit, Mich., and that the remainder had been shipped on or about April 25, 1938, by Levy Drugs, Inc., from Tampa, Fla.; and charging that the former shipment was misbranded and that the latter shipment was adulterated and misbranded in violation of the Food and Drugs Act. The former shipment was labeled in part: "Capsules * * * Santal Oil, U. S. P. * * * (Pure) (East India) * * * Premo Pharmaceutical Laboratories Distributors"; the latter shipment was labeled in part: "Capsules * * * Santal Oil (Pure) (East India) * * * Premo Pharmaceutical Laboratories * * * New York, N. Y. Sole Distributors."

The Premo Pharmaceutical Laboratories, the firm in possession of the goods at the time of seizure, was not the producer but was the distributor and held guaranties from the firm from which the drug was purchased that it was not adulterated or misbranded in violation of the Food and Drugs Act. In compliance with instructions from the distributor the oil had been delivered by the firm from which it was purchased, to certain firms for capsulation, which firms shipped it in interstate commerce, as alleged in the libels.

The shipment from Detroit was alleged to be misbranded in that the statement on the label, "Santal Oil * * * Santal Oil U. S. P. * * * (Pure) (East India)," was false and misleading since the article was not santal oil of U. S. P. quality in that it did not have the characteristic odor of santal oil, it was not soluble in 70 percent alcohol, and it contained a benzyl compound, a derivative of phthalic acid, and terpineol.

The shipment from Tampa was alleged to be adulterated in that its strength fell below the professed standard or quality under which it was sold, namely, "Santal Oil (Pure) (East India)," since it was not the volatile oil distilled with steam from the dried heartwood of *Santalum album* Linné, in that it contained a derivative of phthalic acid, a benzyl compound, and terpineol. The said shipment was alleged to be misbranded in that the statement on the label, "Santal Oil (Pure) (East India)," was false and misleading.

On December 9, 1939, no claimant having appeared, judgments of condemnation were entered and the product was ordered destroyed.

GROVER B. HILL, *Acting Secretary of Agriculture.*

30989. Adulteration and misbranding of chloral hydrate compound, Collyrium (eye lotion), Haglogen, solution of sodium cacodylate, and bichloride tablets. U. S. v. Clifford V. Haver, Louis A. Merillat, Mrs. Myrtle Mary Haver, and William Earl Cahill, trading as a business trust under the name of the Haver-Glover Laboratories. Plea of guilty on behalf of the company; fine $260. Plea of nolo contendere by Louis A. Merillat; fine $20. (F. & D. No. 42656. Sample Nos. 15393–D, 15395–D, 15397–D, 15399–D, 15703–D, 15719–D.)

This case involved the following products: Chloral hydrate compound which contained smaller proportions of chloral hydrate and potassium than those declared; Collyrium (eye lotion) which contained smaller proportions of sulfate of zinc, boracic acid, and procaine than those declared; Haglogen the labeling of which bore false and misleading representations regarding its effectiveness as an antiseptic and disinfectant, and false and fraudulent curative and thera-

peutic claims; sodium cacodylate which contained a smaller proportion of sodium dimethylarsenate than that declared; and bichloride tablets which contained smaller proportions of corrosive sublimate and ammonium chloride than those declared.

On June 5, 1939, the United States attorney for the Western District of Missouri, acting upon a report by the Secretary of Agriculture, filed in the district court an information against Clifford V. Haver, Louis A. Merillat, Mrs. Myrtle Mary Haver, and William Earl Cahill, trading as the Haver-Glover Laboratories, a business trust existing under the laws of the State of Missouri and doing business at Kansas City, Mo., alleging shipment within the period from on or about August 20, 1937, to on or about February 10, 1938, from the State of Missouri into the State of Nebraska of quantities of the above-named drugs, which were adulterated and misbranded in violation of the Food and Drugs Act.

Bacteriological examination of Haglogen showed that it was not an antiseptic and disinfectant when used as directed.

The chloral hydrate compound was alleged to be adulterated in that its strength fell below the professed standard and quality under which it was sold, in that each fluid ounce was represented to contain 120 grains of chloral hydrate and 120 grains of potassium bromide; whereas each fluid ounce contained not more than 108.3 grains of chloral hydrate, and not more than 107.5 grains of potassium bromide. It was alleged to be misbranded in that the statement, "Each Fluid ounce contains Chloral hydrate 120 gr. Potassium bromide 120 gr.," borne on the bottle label, was false and misleading since the article contained less chloral hydrate and potassium bromide than declared.

The Collyrium (eye lotion) was alleged to be adulterated in that its strength fell below the professed standard and quality under which it was sold, in that it was represented to contain 3 percent of zinc sulfate, 10 percent of boracic acid, and 1 percent of procaine; whereas it contained not more than 2.52 percent of zinc sulfate, not more than 6.0 percent of boracic acid, and not more than 0.38 percent of procaine. It was alleged to be misbranded in that the statements, "Contains: Sulph. of zinc. * * * 3% Boracic Acid * * * 10% Procaine 1%," borne on the carton and bottle label, were false and misleading since it contained less sulfate of zinc, less boracic acid, and less procaine than declared.

The Haglogen was alleged to be adulterated in that its strength fell below the professed standard and quality under which it was sold, in that it was represented to be an antiseptic and disinfectant when used as directed; whereas it was not an antiseptic and disinfectant when used as directed. It was alleged to be misbranded in that the statements, "Haglogen is * * * antiseptic, disinfectant * * * Dilute one-half ounce to a pint for washing, irrigating or douching wounds or body cavities. The dose of this dilution internally is one to two ounces repeated ad libitum," borne on the bottle label, were false and misleading since the article was not an antiseptic and disinfectant when used as directed. It was alleged to be misbranded further in that certain statements in the labeling regarding its curative and therapeutic effects falsely and fraudulently represented that it was effective as an antiseptic and disinfectant and effective in the treatment of septic, putrid, catarrhal, and gangrenous processes in wounds and mucous membranes; and effective as a wash, irrigant, or douche for wounds or body cavities.

The sodium cacodylate solution (2 shipments) was alleged to be adulterated in that its strength fell below the professed standard and quality under which it was sold, in that the product in one of the shipments was represented to contain in each 10 cubic centimeters 45 grains of sodium dimethylarsenate and the product in the other shipment was represented to contain 90 grains of sodium dimethylarsenate in each 10 cubic centimeters; whereas the former contained not more than 37.4 grains and the latter contained not more than 82.8 grains of sodium dimethylarsenate in each 10 cubic centimeters. It was alleged to be misbranded in that the statements, "Each 10 c. c. contains: 45 grs. Sodium Dimethylarsenate" and "Each 10 c. c. contains: 90 grs. Sodium Dimethylarsenate," borne on the bottle label, were false and misleading, since the article in each case contained less sodium dimethylarsenate than the amount declared.

The bichloride tablets were alleged to be adulterated in that their strength fell below the professed standard and quality under which they were sold in that each of the tablets was represented to contain 7.3 grains of corrosive

sublimate and 7.7 grains of ammonium chloride; whereas they contained not more than 6.0 grains of corrosive sublimate, and not more than 5.2 grains of ammonium chloride. Misbranding was alleged in that the statement, "Each Tablet contains: Corrosive Sublimate 7.3 gr. Ammonium Chloride 7.7 gr.," borne on the bottle labels, was false and misleading, since the article contained less corrosive sublimate and ammonium chloride than the amounts declared.

On June 12, 1939, a plea of guilty having been entered on behalf of the Haver-Glover Laboratories, the court imposed a fine of $200 against the said company. On January 22, 1940, Louis A. Merillat entered a plea of nolo contendere and was fined $20.

GROVER B. HILL, *Acting Secretary of Agriculture.*

30990. Adulteration and misbranding of Elixir Ferro-Quin With Strychnia and Calcigol With Iodine Tablets. Misbranding of Cholax Brand Pulvis Effervescens Sodii Phosphatis Compound, V. E. T. Skin Remedy, Dermatans Tablets, Pancreatone Capsules, and Meth-O-Sol (liniment). U. S. v. George T. Lambert, David Periera, and George D. Lambert (The Crescent-Kelvan Co.). Pleas of nolo contendere. Fines, $250. (F. & D. No. 42657. Sample Nos. 9901–D, 29929–D, 29930–D, 30049–D, 30050–D, 30051–D, 30248–D.)

This action involved shipments of Ferro-Quin With Strychnia that contained less tincture of ferric citrochloride than the amount declared; V. E. T. Skin Remedy the labeling of which bore false and fraudulent curative and therapeutic claims and also failed to bear a declaration of the alcohol present; Dermatans that contained arsenic sulfide in excess of the amount declared on the label: Cholax Brand Pulvis Effervescens Sodii Phosphatis Compound the labeling of which bore false and fraudulent curative and therapeutic claims and false and misleading statements indicating that it was of pharmacopoeial standard and contained a significant amount of lithium; Pancreatone the labeling of which bore false and fraudulent curative and therapeutic claims and false and misleading representations regarding its constituents; Meth-O-Sol the labeling of which bore false and fraudulent curative and therapeutic claims; and Calcigol With Iodine the labeling of which bore false and fraudulent curative and therapeutic claims and false and misleading representations regarding its content of iodine.

On April 14, 1939, the United States attorney for the Eastern District of Pennsylvania, acting upon a report by the Secretary of Agriculture, filed in the district court an information against George T. Lambert, David Periera, and George D. Lambert, trading as the Crescent-Kelvan Co., a business trust, Philadelphia, Pa., alleging shipment by said defendant in violation of the Food and Drugs Act as amended, within the period from on or about July 16, 1937, to on or about July 16, 1938, from the State of Pennsylvania into the States of New Jersey and Delaware of quantities of the above-named drugs which were misbranded and portions of which were also adulterated.

Analysis showed that the V. E. T. Skin Remedy consisted of water, alcohol, a gum, and a very small amount of phenol, that the Cholax Brand Pulvis Effervescens Sodii Phosphatis Compound consisted essentially of sulfates and phosphates of sodium and magnesium and a trace of lithium, with citric acid and tartaric acid and sodium bicarbonate as an effervescent base; that the Pancreatone consisted essentially of compounds of arsenic, manganese, and strychnine, animal substance (possibly pancreas), and plant material including gentian; that the Meth-O-Sol contained camphor, methyl salicylate, and oleoresin of capsicum with turpentine and croton oil indicated; and that the Calcigol contained a maximum of 0.0309 grain of iodine per tablet.

The Ferro-Quin With Strychnia was alleged to be adulterated in that its strength fell below the professed standard and quality under which it was sold since each ounce of the article was represented to contain 40 minims of tincture of ferric citrochloride, whereas each ounce of the article contained not more than 30.9 minims of ferric citrochloride. It was alleged to be misbranded in that the statement "Each ounce represents * * * Tr. Ferric Citro Chloride 40 Min.," borne on the label, was false and misleading.

The V. E. T. Skin Remedy was alleged to be misbranded in that it contained alcohol but the label failed to bear a statement of the quantity or proportion of alcohol that it contained. It was alleged to be misbranded further in that certain statements, designs, and devices regarding its curative and therapeutic effects, borne on the bottle label, falsely and fraudulently represented that it was effective as a skin remedy and as a treatment for skin irritations, eczema, and itch.

The Dermatans was alleged to be misbranded in that the statement "Arsenic Sulph. * * * 1-60 gr.," borne on the bottle label, was false and misleading since it represented that each tablet contained 1/60 grain of arsenic sulfide; whereas the tablets contained more arsenic sulfide than the amount represented, namely, not less than 0.020 grain, i. e., 1/50 grain of arsenic sulfide.

The Pulvis Effervescens Sodii Phosphatis Compound was alleged to be misbranded in that statements in the labeling regarding its therapeutic and curative effects falsely and fraudulently represented that it was effective as a treatment for rheumatism, gout, uric acid, jaundice, dizziness, biliousness, uric acid conditions, nausea from various causes, and affections of the stomach, liver, and kidneys; effective to stimulate the intestinal secretions necessary to a healthy digestion and to regulate the liver, kidneys, and bowels; effective as a stomach and liver salt and effective as an anti-lithic, anti-rheumatic, and alterative; effective as of therapeutic value wherever a uric acid solvent, hepatic, stimulant, toxaemic, eliminant, or gastric sedative is required; and effective to improve the constitution. It was alleged to be misbranded further in that the statement "Pulvis Effervescens Sodii Phosphatis Comp." borne on the bottles and cartons, was false and misleading in that it represented that the article consisted of sodii phosphas effervescens, a product recognized in the U. S. Pharmacopoeia, whereas it did not consist of sodii phosphas effervescens since it contained not more than 16.4 percent of exsiccated sodium phosphate; whereas the pharmacopoeia requires that sodii phosphas effervescens contain not less than 20 percent of exsiccated sodium phosphate and said article contained magnesium sulfate and sodium sulfate, ingredients not present in sodii phosphas effervescens as described in the pharmacopoeia. It was alleged to be misbranded further in that the statement "Containing * * * Lithia" borne on the bottle label was misleading since it created the impression that the article contained lithium in an amount sufficient to be of therapeutic importance, whereas it contained but a trace of lithium.

The Pancreatone was alleged to be misbranded in that statements on the bottle label regarding its curative and therapeutic effects falsely and fraudulently represented that it was effective as a treatment for diabetes mellitus and all diseases of pancreatic origin. It was alleged to be misbranded further in that the statement "Pancreatone" borne on the bottle label was false and misleading since it represented that the article consisted solely of material derived from pancreas; whereas it did not consist solely of material derived from pancreas, but did contain other ingredients, namely, compounds of arsenic, manganese, strychnine, and plant material including gentian.

The Meth-O-Sol Liniment was alleged to be misbranded in that statements on the label regarding its curative and therapeutic effects falsely and fraudulently represented that it was effective as a treatment for neuritis, rheumatism, pleurisy, lumbago, backache, sciatica, and other conditions in which there is pain.

The Calcigol With Iodine was alleged to be adulterated in that its strength fell below the professed standard and quality under which it was sold in that each of the tablets was represented to contain 1/20 grain of iodine; whereas the tablets contained not more than 0.031 grain, namely, 1/32 grain of iodine. It was alleged to be misbranded in that the statement "Iodine 1/20 gr.," borne on the label, was false and misleading. It was alleged to be misbranded further in that statements on the bottle label regarding its curative and therapeutic effects falsely and fraudulently represented that it was effective as a treatment for croup, tonsillitis, and bronchitis.

The V. E. T. Skin Remedy was also alleged to be misbranded in violation of the Insecticide Act of 1910, as reported in notices of judgment published under that act.

On December 8, 1939, pleas of nolo contendere were entered by the defendants. On January 5, 1940, the court imposed a fine of $250 for violation of both acts, the fine to be apportioned equally among the three defendants.

GROVER B. HILL, *Acting Secretary of Agriculture.*

30991. Misbranding of Neutro-Plasm. U. S. v. Joseph D. Wiener, Dr. Victor R. Marburger, and Charles G. Lane (Neutro-Plasm Foundation). Pleas of nolo contendere. Fine, $400. (F. & D. No. 40832. Sample No. 34257-C.)

The labeling on this product bore false and fraudulent representations regarding its curative and therapeutic effectiveness and false and misleading representations regarding its constituents.

On May 23, 1938, the United States attorney for the Eastern District of Michigan, acting upon a report by the Secretary of Agriculture, filed an in-

formation against Joseph D. Wiener, Dr. Victor R. Marburger, and Charles G. Lane, copartners trading as the Neutro-Plasm Foundation, Detroit, Mich., alleging shipment by said defendants in violation of the Food and Drugs Act as amended, on or about May 29, 1937, from the State of Michigan into the State of Illinois, of a quantity of Neutro-Plasm which was misbranded.

Analysis showed that the article consisted essentially of extracts of plant drugs including a bitter drug, a laxative drug, alcohol, and water.

Misbranding was alleged in that the statements, (circular) "Neutro-Plasm Saprophyte in Amara Media" and "A non-toxic saprophyte," and (bottle) "Neutro-Plasm," were false and misleading in that the said statements represented that the article contained viable saprophytes, namely, organisms that live upon dead organic material and that it was a protoplasmic substance; whereas it did not contain viable saprophytes since it was sterile and it was not a protoplasmic substance. It was alleged to be misbranded further in that statements in the labeling regarding its curative and therapeutic effects falsely and fraudulently represented that it was effective to attack and destroy dead or abnormal tissue or organisms; effective in preventing bacterial invasion and in neutralizing toxic accumulations; effective to inhibit the development of abnormal cellular structure or degeneration by aiding in the restoration of normal function; effective to check the development or spread of various forms of carcinoma, sarcoma, and epithelioma, and to correct such condition and restore the patient to a normal condition; and effective as a treatment for open ulceration.

On January 19, 1940, pleas of nolo contendere having been entered, the court imposed a fine of $100 on the firm.

GROVER B. HILL, *Acting Secretary of Agriculture.*

30992. Adulteration and misbranding of Ointment Belladonna, Ointment Ophthalmic Holocaine and Epinephrine, and Ointment Ophthalmic Argenoid. U. S. v. The National Drug Co. Plea of nolo contendere. Fine, $150. (F. & D. No. 42759. Sample Nos. 28873–D, 53272–D, 53277–D.)

The Ointment Belladonna contained a smaller amount of the alkaloids of belladonna leaf than that required by the U. S. Pharmacopoeia; the Ointment Ophthalmic Holocaine and Epinephrine contained less phenacaine hydrochloride than indicated by the labeling; and the Ointment Ophthalmic Argenoid contained a smaller percentage of silver than that indicated in the labeling.

On October 18, 1939, the United States attorney for the Eastern District of Pennsylvania, acting upon a report by the Secretary of Agriculture, filed in the district court an information against the National Drug Co., a corporation, Philadelphia, Pa., alleging shipment by said company in violation of the Food and Drugs Act on or about October 15 and 26 and November 8, 1938, from the State of Pennsylvania into the States of South Carolina and Missouri, of quantities of the above-named drugs that were adulterated and misbranded.

The Ointment Belladonna was alleged to be adulterated in that it was sold under a name recognized in the United States Pharmacopoeia but differed from the standard of strength, quality, and purity as determined by the tests laid down therein since it contained not more than 0.082 percent of the alkaloids of belladonna leaf; whereas the pharmacopoeia provides that belladonna ointment shall yield not less than 0.118 percent of the alkaloids of belladonna leaf and the standard of strength, quality, and purity of the article was not declared on its container. It was alleged to be adulterated further in that its strength fell below the professed standard and quality under which it was sold since it was represented to contain 10 percent of pilular extract of belladonna; whereas it contained not more than 8.2 percent of pilular extract of belladonna. It was alleged to be misbranded in that the statement on the label "Ointment Belladonna U. S. P. XI" was false and misleading since the article did not conform to the standard laid down in the United States Pharmacopoeia eleventh revision.

The Ointment Ophthalmic Holocaine and Epinephrine was alleged to be adulterated in that its strength fell below the professed standard and quality under which it was sold in that it was labeled "Holocaine (1½ per cent)," which label represented that the article contained 1.5 percent of phenacaine hydrochloride (Holocaine is a trade name for the chemical product phenacaine hydrochloride), whereas the article contained not more than 1.05 percent of phenacaine hydrochloride. It was alleged to be misbranded in that the statement "Holocaine (1½ per cent)" was false and misleading since "Holocaine" is a

trade name for the chemical product phenacaine hydrochloride, and the article contained less than 1½ percent of phenacaine hydrochloride.

The Ointment Ophthalmic Argenoid was alleged to be adulterated in that its strength fell below the professed standard and quality under which it was sold since it was labeled "10 Per Cent (Mild Silver Protein)" which label represented that the article contained 10 percent of the amount of silver which is contained in mild silver protein as defined in the United States Pharmacopoeia, which requires that mild silver protein shall contain not less than 19 percent of silver, i. e., it represented that said article contained not less than 1.9 percent of silver; whereas it contained less than 1.9 percent of silver, namely, 1.69 percent of silver. It was alleged to be misbranded in that the statement "10 Per Cent (Mild Silver Protein)" was false and misleading in that it did not contain 1.9 percent of silver, the amount that should be present in a product containing 10 percent of mild silver protein, but did contain a less amount.

On December 8, 1939, a plea of nolo contendere having been entered on behalf of the defendant, the court imposed a fine of $150.

GROVER B. HILL, *Acting Secretary of Agriculture.*

30993. Adulteration and misbranding of cod-liver oil. U. S. v. 31 Drums of Cod-Liver Oil. Decree of condemnation. Product released under bond for relabeling. (F. & D. No. 45439. Sample No. 19774–D.)

This product was represented to contain 125 A. O. A. C. chick units of vitamin D per gram, but did contain not more than 95 such units of vitamin D per gram.

On June 2, 1939, the United States attorney for the District of Minnesota, acting upon a report by the Secretary of Agriculture, filed in the district court a libel against 31 drums of cod-liver oil at Minneapolis, Minn.; alleging that the article had been shipped in interstate commerce on or about December 24, 1938, by Charles L. Huisking & Co., Inc., from New York, N. Y.; and charging adulteration and misbranding in violation of the Food and Drugs Act. The article was labeled in part: "Pure Cod Liver Oil * * * USP Vitamine Brand."

Adulteration was alleged in that the strength and purity of the article fell below the professed standard under which it was sold, namely, "Chick Tested Guaranteed Minimum 125 AOAC—D—Units per gram," since the article did not contain 125 A. O. A. C. chick units of vitamin D per gram but did contain a smaller amount.

It was alleged to be misbranded in that the statement, "Chick tested guaranteed minimum 125 AOAC—D units per gram," was false and misleading.

On October 31, 1939, Charles L. Huisking & Co., Inc., claimant, having admitted the allegations of the libel, judgment of condemnation was entered and the product was ordered released under bond conditioned that it be properly relabeled.

GROVER B. HILL, *Acting Secretary of Agriculture.*

30994. Misbranding of Anti-Firin. U. S. v. Henry William Robinson and George Norman Robinson (Marvel Remedies Co.). Pleas of nolo contendere. Defendants placed on probation for 2 years. (F. & D. No. 42637. Sample Nos. 24376–C, 18178–D.)

The label of this veterinary product bore false and fraudulent representations regarding its curative and therapeutic effectiveness.

On January 12, 1939, the United States attorney for the Northern District of California, acting upon a report by the Secretary of Agriculture, filed in the district court an information against Henry William Robinson and George Norman Robinson, trading as the Marvel Remedies Co., San Francisco, Calif., alleging shipment by said defendants in violation of the Food and Drug Act as amended, on or about March 1, 1937, and May 10, 1938, from the State of California into the State of Nevada of quantities of Anti-Firin that was misbranded.

Analysis showed that the article consisted essentially of castor oil containing approximately 6 percent of methyl salicylate, colored with a red dye.

The article was alleged to be misbranded in that certain statements, designs, and devices regarding its curative and therapeutic effects, borne on the can labels and in accompanying circulars falsely and fraudulently represented (in the case of one shipment) that it was effective to relieve boils and warts and as a treatment for boils; effective to relieve fistula, wire cuts, harness sores and wounds, lameness, thrush, bow tendons, splints, big knees, ringbone and sidebone (of short standing), and warts in horses; effective as a treatment for

lameness in horses; effective to relieve cake bag, warts, foxtail, wire cuts, and lameness in cows; effective as a treatment for cake bag, foxtail, and warts in cows; effective to relieve lameness, mange, minor cuts, and wounds in dogs; effective as a treatment for lameness, mange, wire cuts, and warts in dogs; and effective to relieve without firing, blemish, or pain; and (in the case of the other shipment) that it was effective as an absorbent and healer; effective to absorb all inflammation, foreign or poisonous matter; effective to remove burns, rheumatic pains, boils, warts, swellings, and skin infections such as eczema and ringworm; effective as a treatment for burns and cuts; effective to remove fistula, wire cuts, harness sores and wounds, lameness, cracked heels, thrush, bow tendons, poll evil, bone spavins, splints, big knees, shoe boils, ringbone, sidebones, spavins, and saddle and harness sores on horses; effective as a treatment for severe cases of lameness, long-standing enlargements (hard or soft), swelling, and severe tendon and ligament cases in horses; effective to remove cake bag, foxtail, wire cuts, cowpox, ringworm, lameness, and sore feet on cows; effective as a treatment for inflammation of the udder, cake bag, and foxtail in cows; effective to remove lameness. dropped muscles, mange, canker, and cuts and wounds of all kinds on dogs; effective as a treatment for lameness, mange, and other skin infections in dogs, and as a treatment for foot ailments in animals; effective as a treatment for open wounds, inflammation of the skin, flesh, bone or tendon, and wire cuts in animals; and effective to relieve, without firing, blemish or pain.

On June 6, 1939, the defendants entered pleas of nolo contendere and the court sentenced them to 2 years' probation.

GROVER B. HILL, *Acting Secretary of Agriculture.*

30995. Adulteration and misbranding of codeine sulfate tablets. U. S. v. The Wm. S. Merrell Co. Plea of nolo contendere. Fine, $200. (F. & D. No. 42792. Sample Nos. 37259–D, 37260–D, 47494–D, 63941–D, 63942–D.)

This case involved shipments of a product purported to be codeine sulfate tablets but which was in fact morphine sulfate tablets.

On March 4, 1940, the United States attorney for the Southern District of Ohio, acting upon a report by the Secretary of Agriculture, filed an information against the Wm. S. Merrell Co., a corporation trading at Cincinnati, Ohio, alleging shipment by said company in violation of the Food and Drugs Act within the period from on or about January 13 to on or about February 16, 1939, from the State of Ohio into the States of Missouri, Kansas, and Virginia, respectively, of quantities of alleged codeine sulfate tablets which were adulterated and misbranded. The article was labeled in part: "Codeine Sulphate (Opium derivative) ½ Grain."

Adulteration was alleged in that the article was sold under a name recognized in the National Formulary but its strength, quality, and purity differed from the standard of strength, quality, and purity of tablets of codeine sulfate as determined by the tests laid down in the said formulary in that it contained no codeine sulfate but did contain morphine sulfate.

It was alleged to be misbranded in that the statement "H. T. * * * Codeine Sulphate," borne on the bottle label, was false and misleading since the said article did not consist of codeine sulfate but did consist of morphine sulfate tablets. It was alleged to be misbranded further in that it was offered for sale and sold under the name of another article, namely, "H. T. * * * Codeine Sulphate," and in that it contained morphine and the label on the package failed to bear a statement of the quantity or proportion of morphine contained therein.

On March 8, 1940, a plea of nolo contendere was entered on behalf of the defendant, and the court imposed a fine of $200 on each of the six counts of the information but suspended payment on all counts but the first.

GROVER B. HILL, *Acting Secretary of Agriculture.*

30996. Adulteration and misbranding of Causalin. U. S. v. Amfre Drug Co., Inc., and Lewis Stern. Pleas of guilty. Fines, $420. (F. & D. No. 42678. Sample Nos. 25962–D, 25963–D, 25964–D, 30071–D to 30074–D, incl., 30092–D to 30097–D, incl., 35452–D, 35453–D, 35567–D, 35569–D, 35570–D, 41997–D.)

This product was represented to contain aminopyrine and quinolinesulfonate, whereas it contained in addition to such drugs a material proportion of salicylic ethyl ester carbonate.

On January 30, 1940, the United States attorney for the Southern District of New York, acting upon a report by the Secretary of Agriculture, filed in the

district court an information against the Amfre Drug Co., Inc., New York, N. Y., and Lewis Stern, president of the corporation, alleging shipment in violation of the Food and Drugs Act, within the period from on or about July 1 to on or about December 27, 1938, from the State of New York into the States of New Jersey, Pennsylvania, Massachusetts, and Rhode Island, of quantities of Causalin which was adulterated and misbranded. The boxes containing a portion of the article were labeled in part: "Aminodimethylpyrazolon-quinolinesulphonate." A circular and a leaflet accompanying one of the shipments bore the statements: (Circular) "Amino-dimethyl-pyrazolon-quinoline-sulphonate * * * The drug used in this study is supplied by Amfre Drug Company under the name of Causalin"; (leaflet) "Amino-dimethyl-pyrazolon-quinoline-sulphonate (Causalin)."

The article was alleged to be adulterated in that its purity fell below the professed standard under which it was sold in that it was represented to consist of aminopyrine (dimethylaminophenyldimethylpyrazolon) and quinolinesulfonate, namely, aminopyrine and quinolinesulfonate; whereas it contained in addition to said drugs a material proportion of salicylic ethyl ester carbonate.

It was alleged to be misbranded in that it consisted of a mixture of aminopyrine (dimethylaminophenyldimethylpyrazolon), salicylic ethyl ester carbonate, and quinolinesulfonate and was offered for sale under the name of another article. "Aminodimethylpyrazolon-Quinolinesulphonate," i. e., aminopyrine and quinolinesulfonate.

Portions of the article were alleged to be misbranded further in that the statements, (boxes of portion) "Aminodimethylpyrazolon-Quinolinesulphonate," and (circular accompanying one shipment) "Chemotherapy: Amino-dimethyl-pyrazolon-quinoline-sulphonate * * * The drug used in this study is supplied by Amfre Drug Company of New York City under the name of Causalin * * * Kimble reports fifty-six cases of chronic nonspecific arthritis were treated with amino-dimethyl-pyrazolon-quinoline-sulphonate (Causalin)," were false and misleading in that the said statements represented that the article consisted of aminopyrine and quinolinesulfonate; whereas it consisted of aminopyrine, salicylic ethyl ester carbonate, and quinolinesulfonate.

The information alleged that the article was also misbranded in violation of the Federal Food, Drug, and Cosmetic Act, as reported in notice of judgment No. 76 published under that act.

On January 30, 1940, the defendants entered pleas of guilty and the court imposed fines for violation of both acts. The fines imposed on the counts charging violation of the Food and Drugs Act amounted to $210 against each defendant.

GROVER B. HILL, *Acting Secretary of Agriculture.*

30997. Misbranding of Enrich Organic Iron Hematinic. U. S. v. Tam Products, Inc., Joseph G. Spitzer, and Marvin Small. Pleas of guilty. Fines, $1,200. (F. & D. No. 42764. Sample Nos. 39901–D, 51200–D.)

The labeling of this product bore false and fraudulent representations regarding its curative and therapeutic effectiveness. It was also labeled to indicate that it contained substantial amounts of organic iron; whereas it contained an insignificant amount of iron, either organic or inorganic.

On November 27, 1939, the United States attorney for the Southern District of New York, acting upon a report by the Secretary of Agriculture, filed in the district court an information against Tam Products, Inc., New York, N. Y., and Joseph G. Spitzer and Marvin Small, officers of the corporation, alleging shipment in violation of the Food and Drugs Act as amended, on or about September 28 and November 12, 1938, from the State of New York into the State of Washington, of quantities of Enrich Organic Iron Hematinic that was misbranded.

Analysis of a sample from one of the shipments showed that it consisted essentially of small proportions of an extract of an animal product, compounds of sodium and ammonium, chlorides, sulfates, and phosphates, a trace of an iron compound, glycerin, and water. Biological tests showed that it contained not more than 2 International Units of vitamin B_1 per cc. and not more than 240 Chase-Sherman units of vitamin B_1 per fluid ounce.

The article was alleged to be misbranded in that the statement "Organic Iron Hematinic," borne on the carton and bottle label, was false and misleading in that it represented that the article contained a substantial amount

of organic iron and that when used as directed, it would supply the consumer thereof with therapeutically important doses of organic iron; whereas it did not contain a substantial amount of organic iron and when used as directed, it would not supply the consumer with therapeutically important doses of organic iron since it contained but an inconsequential amount of iron, either organic or inorganic. It was alleged to be misbranded further in that certain statements in the labeling, regarding its curative and therapeutic effects, falsely and fraudulently represented that it was effective as a treatment for iron-poor blood; effective to benefit the nerves and blood, to improve the digestion, to alleviate nervous fatigue, restless sleep, mental depression, irritability, and headaches when associated with secondary anemia and vitamin B_1 deficiency; effective to increase resistance, to help the blood in case of iron-poor anemia, to relieve many nervous symptoms of secondary anemia, to assist in producing a favorable rise in the hemoglobin and red blood cell count, and to insure improvement in appearance and in the state of well-being; effective to be of great benefit to adolescent girls at the onset of menstruation; and effective as a general tonic in convalescence.

On February 15, 1940, pleas of guilty having been entered on behalf of the defendants, the court imposed fines in the total amount of $1,200, i. e., $400 against each defendant.

GROVER B. HILL, *Acting Secretary of Agriculture.*

30998. Adulteration and misbranding of Oralsulin. U. S. v. Lafayette Pharmacal, Inc., and Bern B. Grubb. Pleas of nolo contendere. Corporation fined $50 and costs. Bern B. Grubb fined $25 without costs. (F. & D. No. 42546. Sample Nos. 21735-C, 48552-C, 53661-C.)

The labeling of two of the three shipments of this product bore false and fraudulent statements regarding its curative and therapeutic effectiveness in the treatment of diabetes mellitus; that of a third shipment bore a device conveying the same false and fraudulent implication. The article was also labeled to indicate that it consisted of insulin or an insulin-like substance which was enclosed in a capsule that would resist the action of the gastric juices and protect the product from disintegration in the stomach but which would be dissolved in the intestinal tract; whereas it was not insulin nor did it possess the properties of insulin, its coating was soluble in gastric juices, and the product would dissolve in the stomach. A sample from one shipment was found to contain ginger and that from a second shipment was found to contain starch.

On January 11, 1939, the grand jurors of the United States within and for the Northern District of Indiana presented an indictment against Lafayette Pharmacal, Inc., Lafayette, Ind., and Bern B. Grubb, president of the corporation at the time of the shipments mentioned hereinafter, alleging shipment in violation of the Food and Drugs Act as amended, on or about January 2, January 6, and September 16, 1937, from the State of New York into the States of Louisiana and Maryland, of quantities of Oralsulin which was adulterated and misbranded.

Analyses of the product showed in each instance that it consisted essentially of powdered animal tissues including a small proportion of an enzyme such as is found in pancreas tissue. A sample was found to contain starch and another was found to contain powdered ginger. Biological tests of the samples showed no evidence of insulin activity following oral administration, also that the coating dissolved in the stomach and that the contents disintegrated in the stomach.

The shipment of January 2, 1937, was alleged to be adulterated in that the strength and purity of the article fell below the professed standard and quality under which it was sold in that it was represented to consist of "Enterocap Oralsulin," namely, insulin or an insulin-like substance intended for oral administration, enclosed in a specially devised and perfected capsule which actually protected against gastric action and dissolved in the intestinal canal; whereas it was not insulin, did not contain insulin or any insulin-like substance, it did not possess the properties of insulin, was not enclosed in a capsule which protected it against gastric action and dissolved in the intestinal canal since the capsule was soluble in gastric juice and the said article would disintegrate in the stomach when administered orally. The said shipment was alleged to be misbranded in that the following statements appearing in the labeling, (circular) "In the treatment of Diabetes Mellitus extreme interest was aroused by the introduction of Insulin. As in the case of anything original or novel in therapeutics, many claims were made; and results anticipated have been modified

to a considerable degree as a result of practical use. Naturally enough, the advent of Insulin stimulated investigation and research having for its object the development of an Oral Medication, rather than the use of the hypodermic method. The main handicap was of course recognized to be the factor of gastric digestion or modification; because medicinal animal substances contain endocrine as well as chemical substances of a protein character. The introduction of these into the stomach unprotected, immediately exposes them to modification or even destruction. Can such substances be adequately protected? The answer to this vitally important question is found in the form of Enterocap Oralsulin. Pronounced En'-ter'-o-cap O'-ral'-su-lin. Oralsulin is a desiccation of the pancreas of young food animals, together with interdependent gland desiccations. This is enclosed in a specially devised and perfected capsule or Enterocap, which actually protects against gastric action and dissolves in the intestinal canal," (carton) "Oralsulin Enterocap * * * A Perfect Seal," and (bottle) "Enterocap Oralsulin," were false and misleading for the reasons indicated hereinbefore. It was alleged to be misbranded further in that certain statements in the labeling regarding its curative and therapeutic effects falsely and fraudulently represented that it was effective as a treatment for diabetes mellitus.

The shipment of January 6, 1937, was alleged to be adulterated in that the strength and purity of the article fell below the professed standard and quality under which it was sold in that it was represented to consist of "Enterocap Oralsulin," namely, insulin or an insulin-like substance intended for oral administration and enclosed in a specially devised and perfected capsule which actually protected against gastric action and dissolved in the intestinal canal; to contain a hormone secreted by and peculiar to the pancreas, namely, insulin; and to consist entirely of special desiccation of the pancreas of young food animals, together with interdependent gland desiccations; whereas it was not insulin, it contained no insulin nor any insulin-like substance, it did not possess the properties of insulin, it was not enclosed in a capsule which protected against gastric action and dissolved in the intestinal canal since said capsule was soluble in gastric juice and the article would disintegrate in the stomach when administered orally, it did not contain a hormone secreted by and peculiar to the pancreas, namely, insulin, and it did not consist entirely of a special desiccation of the pancreas of young food animals, together with interdependent gland desiccation since it consisted in part of ginger. The said shipment was alleged to be misbranded in that the following statements in the labeling, (circular) "Diabetes Therapy In the treatment of Diabetes Mellitus extreme interest was aroused by the introduction of Insulin. As in the case of anything original or novel in therapeutics, many claims were made, and results anticipated have been modified to a considerable degree as a result of practical use. Without in any way disparaging the use of Insulin, and encouraging its use as an emergency agent certain considerations attending its use must of necessity have to be considered by the practical physician in general practice. In the first place, the use of Insulin has to be more or less continuous or constant in the average case of diabetes. It is not a question of the administration of a few doses and subsequent arrest of the disease. Many and continuous injections have to be employed and the natural result is that the method of administration becomes irksome and repulsive, in fact, not infrequently, patients complain that the remedy is worse than the disease. Then again there is the question of expense, for the cost of these frequent injections amounts in most cases to a severe strain on the average person's financial resources. Naturally enough, the advent of Insulin stimulated investigation and research having for its object the development of an Endocrine Hormone effect, rather than direct chemical action. It was of course, important to find not only an agent but a method of administering that agent by the mouth instead of by the needle. The main handicap was of course recognized to be the factor of gastric digestion or modification; because medicinal animal substances contain endocrine as well as chemical substances of a protein character. The introduction of these into the stomach unprotected, immediately exposes them to modification or even destruction. Can such substances be adequately protected? The answer to this vitally important question is found in the form of Enterocap Oralsulin. Pronounced En'-ter'-o-cap O'-ral'-su-lin. Oralsulin is a hormone treatment prepared by a special desiccation of the pancreas of young food animals, together with interdependent gland desiccations. This is enclosed in a specially devised and perfected capsule or Enterocap, which actually protects against gastric action but

just as actually dissolves in the intestinal canal," (carton) "Oralsulin * * * Enterocap * * * A Perfect Seal," and (bottle) "Enterocap Oralsulin," were false and misleading for the reasons indicated hereinbefore. It was alleged to be misbranded further in that certain statements in the labeling regarding its therapeutic and curative effects falsely and fraudulently represented that it was effective as a treatment for diabetes mellitus.

The shipment of September 16, 1937, was alleged to be adulterated in that its strength and purity fell below the professed standard and quality under which it was sold in that it was represented to consist of "Enterocap Oralsulin," namely, insulin or an insulin-like substance intended for oral administration and enclosed in an "enteric investure" which released the medicament in the bowel beyond stomach or gastric digestive functioning and to consist entirely of a desiccated pancreas substance the raw materials of which were derived from animals; whereas it was not insulin, did not contain insulin or any insulin-like substance, it did not possess the properties of insulin, was not enclosed in an "enteric investure" which released the medicament in the bowel beyond stomach or gastric digestive functioning in that the said "investure," namely, capsule, was soluble in gastric juice and said article would disintegrate in the stomach when administered orally and said article did not consist entirely of desiccated pancreas substance, the raw materials of which were derived from animals, but did consist in part of starch. The said shipment was alleged to be misbranded further in that the following statements in the labeling, (circular) "Enterocap Oralsulin is an enteric investure of desiccated pancreas substance * * * The raw materials used are from animals," and "Enterocap is the offer of a method to attempt the release of the medicament in the bowel beyond stomach or gastric digestive functioning," (carton) "Oralsulin," and "Enterocap * * * A Perfect Seal," and (bottle) "Enterocap Oralsulin," were false and misleading for the reasons indicated hereinbefore. The said shipment was alleged to be misbranded further in that the letters "Oralsulin," borne on the bottle, carton, and in the circular constituted a device regarding the therapeutic and curative effects of the article and meant to purchasers of said article that the article was effective in the treatment of diabetes mellitus when used as directed in the circular—the device having acquired such meaning through former representations and claims recommending and claiming that the article was efficacious for such purpose—which were made by the defendants in certain circulars enclosed with previous consignments of the article; and said device and statements were false and fraudulent in that they represented falsely and fraudulently that the article was effective as a treatment for diabetes mellitus.

On December 11, 1939, the Lafayette Pharmacal, Inc. entered a plea of nolo contendere as to all the charges aforesaid and the court imposed a fine of $50 and costs against the corporation. On the same date the defendant Bern B. Grubb entered a plea of nolo contendere to the counts charging false and fraudulent curative and therapeutic representations and was fined $25 without costs.

GROVER B. HILL, *Acting Secretary of Agriculture.*

30999. Misbranding of Catalyn. U. S. v. (Dr.) Royal Lee (Vitamin Products Co.). Tried to the court and a jury. Verdict of guilty. Fine, $800. Judgment affirmed by Circuit Court of Appeals. Writ of certiorari denied. (F. & D. No. 32917. Sample Nos. 45216–A, 45217–A.)

The labeling of this product bore false and fraudulent representations regarding its curative and therapeutic effectiveness and false and misleading representations regarding its vitamin content.

On December 26, 1934, the United States attorney for the Eastern District of Wisconsin, acting upon a report by the Secretary of Agriculture, filed in the district court an information against Dr. Royal Lee, trading as Vitamin Products Co., Milwaukee, Wis., alleging shipment on or about October 23 and November 2, 1933, from the State of Wisconsin into the State of California of quantities of Catalyn which was misbranded in violation of the Food and Drugs Act as amended.

Analysis showed that the article consisted essentially of a mixture of milk sugar, wheat starch, cellulose, nitrogenous matter, fatty acids, saponifiable oil, and mineral matter including small quantities of compounds of iron, aluminum, calcium and sodium, and phosphates. Biological examination showed that the article contained no detectable quantities of vitamins A, C, and D; and no significant quantities of vitamins B and G.

Misbranding was alleged in that certain statements, designs, and devices regarding its curative or therapeutic effects, borne on the bottle labels and wrappers and in the circular shipped with the article, falsely and fraudulently represented that it was effective to restore normal metabolism where abnormality is present; as nature's source of vitality; to build up the vitality and increase the resistance to colds; to prevent insomnia; as a treatment for underweight and overweight; as a supplementary treatment and remedy in acute conditions, children's diseases (measles and whooping cough); to regulate metabolism by building up the vitality and resistance; to promote sounder sleep, greater capacity for physical and mental work and quieter nerves; effective as a treatment and as a supplementary treatment for pernicious anemia, backward children, cystitis, dropsy, simple and toxic goiter, hardening of the arteries, muscular weakness of the heart, enlargement of the heart, rapid pulse, valve leakage, high blood pressure, infections and infectious diseases, flu, pneumonia, focal infections, sinus, leg ulcers, insomnia, kidney inflammation, Bright's disease, low blood pressure, low vitality, lymphatic gland enlargement, nephritis, nervousness, prostate enlargement, St. Vitus dance in children, stomach ulcers, and women's diseases; effective as a natural normalizing influence to help nature remove the cause which brought about the diseased condition and to supply the material nature needs to restore the system to normal; and effective to supply strength and vigor, to prevent cerebral hemorrhage, to insure bounding health and freedom from infection, to prevent stomach and intestinal ulcers, to bring about a normal function of the bowels, to produce alertness and to eliminate the feeling of tiredness and lack of energy. It was alleged to be misbranded further in that the statement, "Contains Vitamins: A-B-C-D * * * F & G, in * * * proportions," borne on the bottle label, was false and misleading in that it represented that the article contained definite proportions of vitamins A, B, C, D, F, and G; whereas it contained no detectable quantities of vitamins A, C, and D; no appreciable quantities of vitamins B and G; and there is no such element as vitamin F.

On January 31, 1939, the defendant filed a motion to quash and a motion for a bill of particulars, which motions were denied by the court without opinion. On February 1, 1939, the defendant having entered a plea of not guilty, the case came on for trial before the court and a jury. The trial was concluded on February 8, 1939, and the jury after due deliberation returned a verdict of guilty. A fine of $800 was imposed with costs of the proceedings. On November 22, 1939, the defendant having perfected an appeal to the Circuit Court of Appeals for the 7th Circuit, the judgment of the district court was affirmed with the following opinion:

KERNER, *Circuit Judge.* "The defendant, Royal Lee (trading as the Vitamin Products Company of Milwaukee, Wis.) appeals from a judgment which pronounced a sentence upon him after conviction by jury. In four counts, the indictment charged him with interstate shipment of his product Catalyn on October 23 and November 2 of 1933, and with the misbranding of Catalyn, thereby violating sections 2, 9, and 10 of the Food and Drugs Act of 1906 as amended. See 21 U. S. C. A., sections 2, 9, 10; see also sections 1 and 7.

"Counts 1 and 3 of the indictment charged that certain representations, pertaining to the curative and therapeutic effect of Catalyn and printed on the bottle labels, wrappers, and enclosures, were false and fraudulent. 21 U. S. C. A., sec. 10. In this regard, it was alleged that by these means defendant intended to deceive buyers and to create in their minds the impression that Catalyn contained ingredients effective to cure, mitigate, or prevent over 50 enumerated ailments, e. g., dropsy, goiter, heart trouble, and stomach ulcers.

"Counts 2 and 4 of the indictment charged that certain statements pertaining to the contents or ingredients of Catalyn were false and misleading. 21 U. S. C. A., sec. 9. In this connection, it was alleged that the particular information on the bottle labels indicated falsely that Catalyn contained definite proportions of the various vitamins. On this appeal, the fact finding of interstate commerce, amply supported by the evidence, was not contested. 21 U. S. C. A., sec. 2.

"The defendant was tried before the jury and convicted on all four counts. The court imposed sentence and the defendant appealed therefrom. In his appeal, defendant urges consideration of the following assigned errors: (1) Refusal to discharge defendant at the close of plaintiff's case; (2) justice not done; (3) misconduct of trial judge; (4) improper admission and rejection of

evidence; (5) improper assessment of costs; (6) refusal to grant bill of particulars; and (7) erroneous instructions. Our considerations follow.

"Refusal to Discharge Defendant at Close of Plaintiff's Case. In order to consider the error here assigned, it is necessary to analyze the Government's evidence in the light of the charge made in the indictment. In this case, defendant holds his Catalyn tablet out to the buying public as containing various vitamins and definite proportions thereof; he also states that Catalyn is effective for the treatment of certain enumerated diseases and ailments. On the other hand, the Government alleges in the indictment that Catalyn does not contain the named vitamins or definite proportions thereof, and that Catalyn's therapeutic claims are exaggerated and intended to deceive the public. Has the Government proved its case?

"Evidence adduced in the form of physical and documentary exhibits clearly show Lee's representations concerning the contents and curative effect of Catalyn. The bottle label stated that the bottle 'Contains Vitamins: A-B-C-D-E-F & G; in such proportions as to most effectively restore normal metabolism where abnormality is present.' The blue circular accompanying the bottle of Catalyn tablets stated, in substance and among other things, that Catalyn was effective for the treatment of pernicious anemia, dropsy, goiter, heart trouble, underweight, pneumonia, Bright's disease, St. Vitus dance in children, and stomach ulcers. Booklets advertising Catalyn revealed such statements as 'Catalyn * * * Recommended and Guaranteed for Goiter, Heart Trouble, * * * Insomnia, * * * Anemia, * * * Dropsy * * *.'

"The Government introduced evidence relating to the composition and constituent ingredients of Catalyn. The testimony in this regard disclosed that Catalyn did not contain vitamins A, C, or D, and that it did contain $1\frac{3}{10}$ International Units of vitamin B and vitamin G equal to $\frac{1}{7}$ gram of dried yeast. Further testimony indicated that vitamin G is now known as vitamin B, and pointed out that the user would have to take 150 Catalyn tablets per day to meet the body's daily minimum need therefor.

"It is obvious that this evidence refutes defendant's representations that Catalyn consisted of vitamins A-B-C-D-E-F-G in 'such proportions as to most effectively restore normal metabolism where abnormality is present.' In addition, this evidence also militates against defendant's assertions that Catalyn possessed therapeutic value, for Catalyn's curative powers are necessarily based on the named vitamins.

"The source of the evidence discussed above is the biological analysis of Catalyn conducted by the Vitamin Division of the United States Food and Drug Administration. This vitamin assay of Catalyn was made under the supervision of Nelson, a recognized authority on vitamins and vitamin standards. Nelson was aided by Irish (chemist), who directly determined the vitamin contents of Catalyn and who also made a chemical analysis in the case of vitamin C. This bio-assay analysis was supported by a qualitative examination by Yakowitz (analytic chemist), microscopic examination by Keenan (microanalyst), and a quantitative examination by Lightbody (pharmacologist).

"The bio-assay test used here, namely, the biological method of measuring the vitamin contents of a given product by employing experimental animals (white rats and guinea pigs), is the test accepted and the method officially recognized by the consensus of expert opinion in the field of medicine, pharmacy, and nutrition. In this case, the accuracy of the biological analysis and the evidence obtained therefrom stands uncontradicted and unquestioned.

"In this connection, it is interesting to note that defendant's witness Dr. Barrett, in discussing the bio-assay test, remarked that it is 'the best way we now have' to determine the presence or absence of vitamins in a given product. Moreover, defendant's witness Dr. Kanoky testified that 'if I wanted to know how much vitamin there was in a Catalyn pill I would turn it over to a biologist,' and that the 'bio-assay method is the accepted method by the profession to determine the quantity of vitamins in a given product.'

"The Government then adduced expert testimony relating to the therapeutic or curative value of Catalyn. In substance, the physicians called by the Government testified to and agreed on two propositions: (1) That assuming the accuracy of the vitamin analysis (and, as we have stated before, the accuracy thereof is not attacked), Catalyn lacks therapeutic merit; (2) that assuming Catalyn contained the represented vitamins, its curative value would nevertheless be confined to vitamin-deficiency cases, which excludes such diseases and ailments as measles, anemia, dropsy, goiter, valve leakage of the heart, pneumonia, Bright's disease, St. Vitus dance, leg ulcers, and stomach ulcers.

"These physicians—Drs. Hart, Sevringhaus, Quick, Lettenberger, Brussock, and Goldwater—explicitly added that their testimonies expressed opinions that represented the consensus of reliable medical knowledge. To us it is significant that defendant's expert witnesses did not controvert these expressions. Such an omission suggests to us that the opinions of defendant's expert witnesses, as to whether the above-enumerated maladies are vitamin-deficiency diseases, were personal ones and not in accord with the consensus of reliable medical knowledge.

"Dr. Goldwater also testified that he had administered Catalyn to patients. These tests on human beings convinced him that Catalyn was ineffective, and he so informed the defendant almost a year before the information was filed. The defendant, however, continued to make the representations in question and to state that 'There may be some persons (professional and laymen) who, because of ignorance, or because of belief in obsolete therapeutic theories, may cavil "Catalyn." Some may even intimate the ineffectiveness of vitamins for some of the ailments we list.'

"In addition, the advertising booklet devoted considerable space to a series of detailed reports concerning users of Catalyn. In the booklet it was stated that the case reports were 'authentic' and represented 'Convincing. Evidence of the Merits of Catalyn.' In this case, the Government introduced evidence refusing the authenticity of some of the case reports, and for our purpose it is sufficient to relate one instance.

"The case report of J. M. Reidy disclosed that he was 'badly bloated' with dropsy and that he suffered from heart trouble, enlarged prostate gland, and shortness of breath. The report further represented that Reidy started to take Catalyn on December 19 and that by January 28 he was 'back to work,' with heart apparently O. K., and 'no more shortness of breath.'

"The Government introduced refuting testimony by Reidy's two daughters and his attending physician. Evelyn Reidy testified that 'the only trouble he did suffer from was a heart ailment' and that he did not go back to work on January 28. Mrs. Cyrillus Reidy Nichol, a registered nurse, testified that Reidy was not suffering from dropsy. In addition to verifying the testimonies above, Dr. Farrell, the attending physician, stated that Reidy was not suffering from an enlarged prostate gland. Dr. Farrell added that he had not prescribed Catalyn tablets for Reidy and that he knew Reidy 'wasn't taking them.'

"This evidence clearly bears on the issue of intent and permits the submission of the question of fraud to the common sense judgment of the jury to find whether under the particular facts and circumstances the acts of the defendant were honest—however mistaken—or false and fraudulent. See *United States of America* v. *Dr. David Roberts Veterinary Co., Inc., et al*, 104 F. (2) 785, 788. So, we are convinced and conclude that, at this stage of the trial, at the close of the Government's case, the evidence clearly showed that the Government had proved its case, and for this reason we believe that defendant's assigned error thereon lacks substance.

"Justice Has Not Been Done. This general assignment of error is based fundamentally on the contention that the evidence as a whole does not prove defendant guilty of the particular offense beyond a reasonable doubt. We have analyzed the Government's evidence and have concluded that at that stage of the trial the court had not erred in refusing to discharge the defendant. We shall now examine the defendant's evidence, keeping in mind that the gist of the offense charged is misbranding and misrepresenting the contents and therapeutic value of Catalyn.

"It is interesting to note that the defendant's witnesses, lay and expert, did not state that Catalyn contained the named vitamins. Nor did they question the accuracy of the bio-assay evidence. Nor had they made any analysis of Catalyn. The defendant testified as to how Catalyn was made and what vegetable and animal sources went into the making thereof. At most, the inference that a product made from vitamin-bearing matter contains vitamins creates conflicting evidence, the credibility of which falls within the province of the jury.

"Such an inference is not equal to the assuring representation that all the vitamins were present, and almost disappears when matched against uncontradicted evidence that vitamins A, C, and D are absent. Significant here is Lee's answer, when asked what vitamins Catalyn contained, that it 'contains materials to produce the effect of all the vitamins.' Interesting, too, is Dr. S's statement that although he did not know what was in Catalyn he felt that it helped his patients.

"We observe also that the thesis of the expert testimony for the defense is that Catalyn has helped to cure patients subjected to diseases such as enumerated earlier in this opinion. At this point, we must remember that this curative power of Catalyn is ascribed to the vitamins that Catalyn is represented as containing. Of course, this testimony conflicts with the Government's expert testimony, already stated as expressing the consensus of reliable medical knowledge, that even if Catalyn did contain all of the vitamins it would not help cure the diseases so enumerated, because they are not of the vitamin deficiency type.

"Moreover, Dr. Goldwater, testifying for the Government, claimed that he administered Catalyn to some of his patients and found it ineffective. In addition to this, defendant's expert witnesses do not question the bio-assay evidence. In this regard, Dr. Kanoky admitted that if the bio-assay test was accurate the effect of Catalyn on his patients must have been 'absolutely worthless,' or, as Dr. Quigley put it, hardly effective and more like a homeopathic dose than anything else.

"Counsel for defendant devotes considerable attention to the testimony rendered by defendant's expert witnesses who testified that they administered Catalyn to their patients in the effort to cure them. On this evidence, counsel bases what he calls the 'clinical' or 'bed-side' test, which according to counsel is the method used by defendant to measure the vitamin content in Catalyn. The argument presented is that, since Catalyn was given sick patients suffering from vitamin deficiency, it follows that Catalyn contains all the vitamins and the concomitant therapeutic powers.

"We confess our lack of appreciation for such argument. In thus expressing ourselves, we do not deny that from the evidence thus adduced by defendant arises an inference that Catalyn contains particular vitamins. In view of the whole record, however, we believe, and shall so show, that the inference is not compelling. Necessarily conflicting with the evidence in question is that part of the record which shows that according to the consensus of medical opinion the enumerated diseases above are not of the vitamin deficiency type.

"But this is not all. It is to be noted that defendant's experts administered Catalyn to aid in curing the patient; in not one instance was Catalyn given for the purpose of determining the presence of vitamins. It seems unnecessary to add that the clinical test has not been accepted by the scientific world as a measure of vitamins in any given product, and that Dr. Goldwater tried the clinical test and found it lacking in merit. The record also shows, as we shall describe immediately, that Catalyn administrations ordinarily accompanied the medical or osteopathic treatment of the patient.

"The significance of this is clear. A situation was created which gave rise to another and conflicting inference that the sick patient's recovery was due to the medical or osteopathic treatment, at the same time disclosing that none of the factors necessary to quantitative determination of vitamins were under scientific control. Thus, Dr. S. (osteopath) administered Catalyn during the osteopathic treatment of his patients, although Catalyn was taken after the discontinuance of the manipulative treatment. Drs. Quigley and Barrett (dentist) did not administer Catalyn to patients, and Drs. Kanoky and Olmstead gave Catalyn to patients in conjunction with medicine and specific vitamin concentrates.

"The defense also introduced the testimony of lay witnesses who testified that their self-medication with Catalyn was effective in curing some of the diseases enumerated above. We have examined this lay evidence and find it very unsatisfactory. In general, such evidence is susceptible to the same comments already made as to the expert testimony. It is sufficient to discuss two cases briefly. Mrs. Paul Winzler claimed Catalyn had cured her nervousness. On cross-examination, she admitted that prior to the Catalyn treatments she had followed medical and surgical advice and had her teeth and tonsils removed by surgery. Maria Lichter also claimed that Catalyn had relieved her heart trouble and dropsy. On cross-examination, she admitted that she 'made it a point' to eat carrots and drink fruit juices (both well-known sources of vitamins) during the Catalyn treatments.

"Now that all the evidence has been analyzed, it might be pertinent to summarize the results found. We find that the bio-assay evidence remains unrefuted and uncontradicted. Counsel for defendant, however, although not disputing this evidence, insists that the evidence is worthless because it is not 'connected up with any effect Catalyn may have on human beings.' We be-

lieve that such insistence by counsel is unwarranted in the face of the facts and circumstances described above.

"We are convinced that the expert medical evidence adduced by the Government, and substantiated by defendant's expert witnesses Drs. Kanoky and Quigley, serves as a logical and irresistible connecting link between the bioassay evidence and the therapeutic effect of Catalyn on users thereof. In fact, the record clearly indicates that the presence of vitamins in Catalyn is a condition precedent to the possession by Catalyn of therapeutic value.

"The most that can be said of defendant's evidence is that it lends itself to conflicting inferences and conflicts with the Government's expert evidence at one point, namely, whether the diseases enumerated herein are of a vitamin deficiency type. Since we have already disposed of this point, we conclude by stating that on the record, as we see it, the Government has proved its case beyond a reasonable doubt. We say, therefore, that defendant's assigned error that justice has not been done does not stand judicial scrutiny.

"Refusal to Grant Bill of Particulars. The information, consisting of four counts, clearly set out and sufficiently apprised defendant of the nature and cause of the accusations that he must be prepared to meet. Moreover, an application for a bill of particulars is always submitted to the sound discretion of the court. We cannot say the court abused that discretion. *Wong Tai* v. *United States*, 273 U. S. 77, 82.

"Improper Assessment of Costs. The point is made that the court allowed, as part of the taxable costs, the expenses of attendance and travel of witnesses subpoenaed by the Government, but not called to testify, and also the expense of attendance and travel of an unwarranted number of witnesses whose testimony was cumulative or bore only on immaterial issues.

"In this case it was necessary for the Government to prove the interstate shipments of the misbranded articles and, to secure the best evidence, it required the original records and witnesses to identify the papers concerning these shipments between Milwaukee and California.

"It is true that when witnesses are subpoenaed, but do not testify, the presumption is that their testimony was not material and that they were unnecessarily brought to court, and, in the absence of equitable reasons, the fees of such witnesses are not chargeable against the losing party.

"After the verdict, the question of the taxing of costs was brought to the attention of the court upon the duly verified statement of the district attorney and the counter-affidavit of the defendant, and the court, after due consideration, entered the order taxing the costs.

"Section 974 (28 U. S. C. A. Sec. 822) provides that upon conviction for any offense not capital, the court may award the costs of prosecution against the defendant. Thus the taxing of costs involves the exercise of discretion on the part of the trial court, whose duty it is to determine whether the witnesses subpoenaed were unnecessarily brought to court or that an unwarranted number of witnesses were used in the prosecution. We cannot say that the court abused this discretion.

"Improper Admission and Rejection of Evidence and Erroneous Instructions. Defendant has also assigned as further grounds of error, rulings on the admission and exclusion of evidence and refusal of the court to instruct the jury as requested by the defendant. These assignments do not justify lengthy discussion. We have examined them and found them without merit.

"Misconduct of Trial Judge. We have reserved to the last the contention that the prejudicial attitude of the trial judge deprived the defendant of a fair and impartial trial, because this seems to us to present the only error worthy of serious consideration.

"The record discloses that the defendant had published a report concerning the case of J. M. Reidy, stating that Reidy was suffering from dropsy, and that after taking four Catalyn tablets a day from December 19 to January 28, the dropsy was reduced to normal. Reidy being deceased, his daughter was called to prove that her father had not had dropsy, and thereupon the following occurred:

THE COURT. Do you know how long it was before your father died?

Answer. I imagine——

Mr. MCGOVERN. (Interposing) Was it in 1932?

A. 1932. I was going to say, yes.

Q. Your father was ill in 1930?

A. Yes.

Q. Could it be that this meeting with this woman who brought in Glandstone was in 1930?

A. No, I don't think it was in 1930.

Q. Are you sure what year it was?

THE COURT. She said her best recollection was 1932.

Mr. MCGOVERN. But I am asking her if she is sure of that.

THE COURT. Are you sure of that?

A. I would say 1932.

Q. You would say, but I am asking, are you certain of that or have you——

A. All right, then, I will say it. I will say it then, 1932.

Q. How is that?

A. I will say 1932.

Mr. MCGOVERN. That is hardly telling us whether you are certain of that or not.

THE COURT. She says she will say that now. She is certain of that, and she is giving you that impression and she is telling it to the court and jury. That is the impression we got. Now proceed.

Mr. MCGOVERN. Then witnesses need not answer questions on cross-examination as we ask them if they are proper questions.

THE COURT. There is no need of trying to put three or four interpretations to a clear answer. Proceed with your cross-examination. The jury will understand what this witness is testifying to. You don't have to comment on her answers at all.

"Another instance occurred, it is claimed, in the examination of another daughter of J. M. Reidy. She was a registered nurse, and had testified that there were no outward manifestations that her father had dropsy. In ruling on an objection to that testimony, the court said:

That goes to the weight of the testimony. The jury can determine what weight they will give to it. * * *.

Here is a nurse who took care of her father and was vitally and deeply interested and concerned, and she perhaps studied his case and knew the symptoms of everything he was suffering from. From your observation of your father and from the knowledge that you had acquired as a nurse and the knowledge you had at that time, was there any indication he was suffering from dropsy?

"In the course of the examination of one Dr. Gerald M. S—, who testified that during 1933 he had treated 15 patients, that one quite extreme case had cleared up in 6 weeks—on which he had the case report, the following occurred:

Mr. MCGOVERN. Go ahead and tell us about the case, you have the book out now.

A. That one case report?

THE COURT. Yes.

Mr. MCGOVERN. What was the first disability first stated on that?

THE COURT. What was the name of the patient, also?

Mr. CHAMBERS. * * * It isn't customary to reveal the names of the patients. The doctor, I am sure, has those names.

THE COURT. We want the names. We want all the facts. We want to know this.

A. Well, your Honor, my understanding has been that the physician is privileged to, in his professional relations, to withhold the name of the patient. That has always been my understanding.

THE COURT. We want to know all the facts in this case, Doctor.

A. I am perfectly willing to give all the facts, the full name of the patient.

Mr. MCGOVERN. All right, if the name makes any difference——

THE COURT. Well, give the address. That is sufficient.

A. * * * This particular case that I have had to mention there cleared up in 6 weeks, my own, was my own family pet, my own little Boston bulldog * * *

THE COURT. Is that why you didn't want to give us the name?

A. No. * * * I merely wanted that decision before I revealed the name of some other human patient, that is all.

THE COURT. That was ridiculous, Doctor. We are talking about human beings. Were you trying to give this jury and court the impression you were treating a human being?

Mr. MCGOVERN. Lay that case aside.

Q. Did you have more than one bulldog patient?

A. Oh, yes, over a period of time.

Q. I see. Well, the court wants to know now what the name of your bulldog was.

THE COURT. No, I don't. I want to know the names of the human patients you have treated. If I had not pressed for that information it would not have been disclosed that he was treating a bulldog and not a human being.

Mr. McGOVERN. It was sinister. We would have just pulled the wool over the jury's eyes on that.

"In the examination of Irish, a chemist employed by the United States Department of Agriculture for over 7 years, the court stated:

What is the use of quibbling over this? The witness impresses me as a man that knows what he is talking about, and I don't think he is giving us any idle gossip. He knows what he is talking about.

"And in the course of a colloquy, the court said:

Government experts are well qualified, and you (defendant's counsel) should be the last man to criticize those excellent men who have been up on this witness stand, and have told of their long years of preparation and their very fine service to protect the public from fraudulent drugs.

"In the examination of the defendant he was asked if he had ever had an analysis made of Catalyn and after he had answered 'No,' the following occurred:

THE COURT. Then how can you tell us what these two drugs are?

A. An analysis does not tell anything about the properties of the physical—or therapeutic properties of a——

DISTRICT ATTORNEY. This man is not competent to testify as to the therapeutic qualities.

THE COURT. No.

Mr. McGOVERN. He is an expert on vitamins, and he knows, and your witnesses have said that a chemical analysis is of no use.

THE COURT. That is what you say, that he is an expert on vitamins. It is for the jury to determine how much of an expert he is. We don't want any more reference to that.

"The trial judge is not a mere moderator, but is the governor of the trial for the purpose of assuring its proper conduct and of determining questions of law. *Quercia* v. *United States*, 289 U. S. 466, 469; *Pfaff* v. *United States*, 85 F. (2) 309, 311, and it is his duty to see that all the truth is brought out so that the jury can arrive at a true verdict. While he has a right to ask questions of witnesses in order to ascertain the facts and elicit the truth as to the points in issue, he must not forget the functions of the judge and assume that of the advocate, lest he give the jury the impression that he favors one side or the other, and the extent to which he participates in the examination of a witness must depend largely upon the circumstances of the particular case and the conditions which arise during the trial. He should also be ever mindful that one of the most important essentials to the performance of the exalted task of upholding the majesty of the law is dignity and decorum.

"It is regrettable that the court indulged in some of the remarks appearing in the record, but defendant's counsel is not without fault—he was sarcastic, and some of his remarks were improper and impertinent. Viewing the acts and statements of the court above set out, as well as others complained of, in their relation to the record as a whole, and the convincing nature of the evidence to support the verdict, we would not be warranted in concluding that defendant's cause was prejudiced.

"The defendant's guilt was amply proved, and there is no reason why the judgment should not be affirmed."

Judgment affirmed.

On February 5, 1940, the Supreme Court denied the defendant's petition for writ of certiorari.

GROVER B. HILL, *Acting Secretary of Agriculture.*

31000. Adulteration and misbranding of citrate of magnesia. U. S. v. Certified Magnesia Co., Inc., Henry T. Gran, and William Wohlers. Pleas of guilty by Certified Magnesia Co., Inc., and Henry T. Gran. Each defendant fined $100. Case pending as to William Wohlers. (F. & D. No. 39729. Sample Nos. 9343–C, 17394–C, 17546–C, 26587–C.)

This product contained a smaller amount of citric acid than that required by the United States Pharmacopoeia; and the bottles contained less than the volume declared on the label.

At the August term, 1937, the United States attorney for the Southern District of New York, acting upon a report by the Secretary of Agriculture, filed in the district court an information against Certified Magnesia Co., Inc., New York, N. Y., Henry T. Gran, and William Wohlers, officers of the corporation, alleging shipment by said defendants in violation of the Food and Drugs Act, within the period from on or about October 8, 1936, to on or about

January 20, 1937, from the State of New York into the State of New Jersey, of quantities of citrate of magnesia, that was adulterated and misbranded.

The article was alleged to be adulterated in that it was sold under and by a name recognized in the United States Pharmacopoeia but differed from the standard of strength, quality, and purity as determined by the test laid down therein, in that the article contained in each 10 cubic centimeters total citric acid equivalent to less than 26 cubic centimeters of half-normal hydrochloric acid, i. e., samples taken from each of the four shipments were found to contain total citric acid equivalent to not more than 24.7, 24.3, 24.04, and 23.9 cubic centimeters, respectively, of half-normal hydrochloric acid; whereas the pharmacopoeia provides that each 10 cubic centimeters of citrate of magnesia, i. e., solution of magnesium citrate shall contain total citric acid equivalent to not less than 26 cubic centimeters of half-normal hydrochloric acid, and the standard of strength, quality, and purity of the article was not declared on the container thereof.

It was alleged to be misbranded in that the statements, (bottle label) "Citrate Magnesia * * * U. S. P. * * * Made according to the laws of the United States" and "Net Contents * * * 11½ ounces," and (bottle cap) "Cont. Approx. 11 Fl. Oz.," were false and misleading since it was not citrate of magnesia which conformed to the standard laid down in the pharmacopoeia, and the bottles did not contain 11½ ounces net of the article but did contain a smaller amount, and a number of the bottles contained less than 11 fluid ounces of the article.

On August 12, 1937, pleas of guilty were entered on behalf of the Certified Magnesia Co., Inc. and Henry T. Gran, and fines of $100 were imposed against each. The case is still pending as to William Wohlers.

GROVER B. HILL, *Acting Secretary of Agriculture.*

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United States Department of Agriculture

FOOD AND DRUG ADMINISTRATION

NOTICES OF JUDGMENT UNDER THE FOOD AND DRUGS ACT

[Given pursuant to section 4 of the Food and Drugs Act]

31001–31075

[Approved by the Acting Secretary of Agriculture, Washington, D. C., June 17, 1940]

31001. Adulteration and misbranding of wheat brown shorts and screenings. U. S. v. Commander-Larabee Milling Co. (Larabee Flour Mills Co.). Plea of guilty. Fine, $50. (F. & D. No. 42788. Sample No. 5982–D.)

Wheat mixed feed and screenings had been substituted for wheat brown shorts and screenings and contained more crude fiber than the amount declared on the label.

On January 8, 1940, the United States attorney for the Western District of Missouri, acting upon a report by the Secretary of Agriculture, filed an information against the Commander-Larabee Milling Co., trading as the Larabee Flour Mills Co., Kansas City, Mo., alleging shipment by said defendant on or about May 29, 1939, from the State of Missouri into the State of Texas of a quantity of wheat brown shorts and screenings that were adulterated and misbranded.

The article was alleged to be adulterated in that wheat mixed feed and screenings had been substituted in whole or in part for wheat brown shorts and screenings.

It was alleged to be misbranded in that the statements borne on the tag, "Wheat Brown Shorts & Screenings" and "Crude Fibre, not more than 7.50%," were false and misleading and tended to deceive and mislead the purchaser, since the article consisted of wheat mixed feed and screenings and contained not less than 8.39 percent of crude fiber.

On January 25, 1940, a plea of guilty was entered on behalf of the defendant and the court imposed a fine of $50.

GROVER B. HILL, *Acting Secretary of Agriculture.*

31002. Misbranding of canned peas. U. S. v. 25 Cases of Peas. Default decree of condemnation and destruction. (F. & D. No. 45575. Sample No. 82614–D.)

This product fell below the standard established by this Department because the peas were not immature, and it was not labeled to indicate that it was substandard.

On November 18, 1939, the United States attorney for the Southern District of Florida, acting upon a report by the Secretary of Agriculture, filed a libel against 25 cases of canned peas at Tampa, Fla., alleging that the article had been shipped in interstate commerce on or about October 7, 1939, by W. H. Killian Co. from Baltimore, Md.; and charging that it was misbranded. The article was labeled in part: "Old Reliable Brand Early June Peas Lord-Mott Co. Baltimore, Md. * * * Distributors."

It was alleged to be misbranded in that it was canned food and fell below the standard of quality and condition promulgated by the Secretary of Agriculture, since the peas were not immature and its package or label did not bear a plain and conspicuous statement prescribed by regulation of this department indicating that it fell below such standard.

On January 31, 1940, no claimant having appeared, judgment of condemnation was entered and the product was ordered destroyed.

GROVER B. HILL, *Acting Secretary of Agriculture.*

31003. Adulteration of canned oysters. U. S. v. 99 Cases of Canned Oysters. Default decree of condemnation and destruction. (F. & D. No. 45004. Sample Nos. 62562–D, 62563–D.)

This product contained pieces of oyster shell which were small enough to be swallowed and to lodge in the esophagus, and which were also sharp and capable of inflicting injury in the mouth.

On March 14, 1939, the United States attorney for the Western District of Washington, acting upon a report by the Secretary of Agriculture, filed in the district court a libel praying seizure and condemnation of 99 cases of canned oysters at Takoma, Wash.; alleging that the article had been shipped in interstate commerce, on or about February 1, 1939, from Houma, La., by the Indian Ridge Canning Co.; and charging that it was adulterated in violation of the Food and Drugs act. The article was labeled in part: "Bonnie Best Oysters Packed for Younglove Grocery Co., Takoma, Wash."

The article was alleged to be adulterated in that shell fragments had been mixed and packed with it so as to reduce or lower its quality; in that shell fragments had been substituted wholly or in part for oysters, which it purported to be; and in that it contained an added deleterious ingredient, oyster shell fragments, which might have rendered it injurious to health.

On November 25, 1939, the case having been called and no claimant appearing, judgment of condemnation was entered and the product was ordered destroyed.

GROVER B. HILL, *Acting Secretary of Agriculture.*

31004. Adulteration of canned oysters. U. S. v. 1,715 Cartons of Canned Oysters. Default decree of condemnation and destruction. (F. & D. No. 44863. Sample No. 37665–D.)

Samples of this product were found to contain pieces of shell which were small enough to be swallowed and to lodge in the esophagus and which were also sharp and capable of inflicting injury in the mouth.

On February 17, 1939, the United States attorney for the Western District of Kentucky, acting upon a report by the Secretary of Agriculture, filed in the district court a libel and on March 4, 1939, an amended libel, praying seizure and condemnation of 1,715 cartons of oysters in various lots at Paducah, Mayfield, Murray, Central City, Fulton, and Hickman, Ky.; alleging that the article had been shipped in interstate commerce on or about January 14, 1939, by Gibbs & Co., Inc., from Biloxi, Miss.; and charging that it was adulterated in violation of the Food and Drugs Act. It was labeled in part: "Bull Head Brand Oysters * * * Gibbs & Co., Inc., Distributors, Baltimore, Md."

Adulteration was alleged in that shell fragments had been mixed and packed with the article so as to reduce or lower its quality; in that shell fragments had been substituted wholly or in part for oysters, which the article purported to be; and in that it contained an added deleterious ingredient, oyster shell fragments, which might have rendered it injurious to health.

On April 11, 1939, upon a motion by the Mavar Shrimp & Oyster Co., Ltd., Biloxi, Miss., claimant, an order was entered permitting the taking of samples by the claimant, also further samples by the Government. On November 21, 1939, the case was called and the claimant having failed to appear, judgment of condemnation was entered and the product was ordered destroyed.

GROVER B. HILL, *Acting Secretary of Agriculture.*

31005. Adulteration of butter. U. S. v. Boone Dairy, Inc. Plea of guilty. Fine, $200 and costs. (F. & D. No. 42777. Sample Nos. 54156–D, 55605–D.)

This product contained less than 80 percent by weight of milk fat.

On November 20, 1939, the United States attorney for the Southern District of Iowa, acting upon a report by the Secretary of Agriculture, filed in the district court an information against the Boone Dairy, Inc., Boone, Iowa, alleging shipment by said company in violation of the Food and Drugs Act on or about August 25, 1938, and May 22, 1939, from the State of Iowa into the State of Illinois, of quantities of butter that was adulterated.

Adulteration was alleged in that a product containing less than 80 percent by weight of milk fat had been substituted for butter, a product which should contain not less than 80 percent by weight of milk fat as prescribed by the act of March 4, 1923.

On December 2, 1939, a plea of guilty having been entered on behalf of the defendant, the court imposed a fine of $200 and costs.

GROVER B. HILL, *Acting Secretary of Agriculture.*

31006. Adulteration of candy. U. S. v. 15 Boxes and 7 Boxes of Candy. Default decree of condemnation and destruction. (F. & D. Nos. 43284, 43286. Sample Nos. 27668–D, 27675–D.)

On August 11, 1938, the United States attorney for the Southern District of Illinois, acting upon a report by the Secretary of Agriculture, filed in the district court a libel praying seizure and condemnation of 22 boxes of candy at Springfield, Ill.; alleging that 7 boxes of the article had been shipped from Paducah, Ky., on or about September 1, 1937, by Gilliam Candy Co., and that 15 boxes had been shipped from St. Louis, Mo., on or about February 8, 1938, by National Candy Co., Inc.; and charging that it was adulterated in violation of the Food and Drugs Act. One lot was labeled in part: "National Chocolate Peanut Clusters." The remaining lot was labeled in part: "Peco Flake."

The article was alleged to be adulterated in that it consisted in whole or in part of a filthy vegetable substance.

On December 22, 1939, no claimant having appeared, judgment of condemnation was entered and the product was ordered destroyed.

GROVER B. HILL, *Acting Secretary of Agriculture.*

31007. Adulteration of flake egg albumen. U. S. v. 33 Barrels of Flake Egg Albumen. Consent decree of condemnation. Product ordered released under bond. (F. & D. No. 44332. Sample No. 26444–D.)

This product had been shipped in interstate commerce and remained unsold and in the original packages. At the time of examination it was found to be insect-infested.

On November 14, 1938, the United States attorney for the District of New Jersey, acting upon a report by the Secretary of Agriculture, filed in the district court a libel praying seizure and condemnation of 33 barrels of flake egg albumen at Jersey City, N. J.; alleging that the article had been shipped on or about August 10, 1938, by Henningsen Bros., Inc., from Lamesa, Tex.; and charging adulteration in violation of the Food and Drugs Act. The article was labeled in part: "Fancy Flake Hen Egg Albumen."

The article was alleged to be adulterated in that it consisted in whole or in part of a filthy animal substance.

On January 9, 1940, Henningsen Bros., Inc., claimant, having admitted the allegations of the libel, judgment of condemnation was entered ordering release of the product under bond, conditioned that it be denatured in such manner as to effectively preclude its use for human consumption but not its availability for technical use.

GROVER B. HILL, *Acting Secretary of Agriculture.*

31008. Misbranding of canned peaches. U. S. v. 80 Cases of Canned Peaches. Decrees of condemnation. Product released under bond for relabeling. (F. & D. Nos. 45576, 45577. Sample No. 70543–D.)

This product was substandard, since the fruit was excessively trimmed and was not in unbroken halves. It was not labeled to indicate that it was substandard.

On November 24, 1939, the United States attorney for the District of Colorado, acting upon a report by the Secretary of Agriculture, filed in the district court a libel praying seizure and condemnation of 80 cases of canned peaches at Denver, Colo. (consigned by the Perry Canning Co.); alleging that the article had been shipped in interstate commerce on or about November 2, 1939, from Brigham, Utah; and charging that it was misbranded in violation of the Food and Drugs Act as amended. The article was labeled in part: "Utah Brand * * * Water Packed Peaches Colorado Brokerage Co. Denver Colo. Successors to A. L. Brewer Canning Co., Ogden, Utah."

Misbranding was alleged in that the article was canned food and fell below the standard of quality and condition promulgated by the Secretary of Agriculture, since the fruit was not in unbroken halves, and its package or label did not bear a plain and conspicuous statement prescribed by regulation of this Department indicating that it fell below such standard.

Meyer Levy, Denver, Colo., filed a claim and answer admitting the allegations of the libel and averring that the product had been ordered from the Perry Canning Co.; that by mistake the Perry Canning Co. had omitted the substandard legend from the labels of the cans; and also that the words "Colorado Brokerage Company successors to A. L. Brewer" were placed on the labels by mistake.

On December 5, 1939, judgment of condemnation was entered, and the product was ordered released to the claimant under bond conditioned that it be relabeled under the supervision of this Department.

GROVER B. HILL, *Acting Secretary of Agriculture.*

31009. Adulteration of frozen fish. U. S. v. 1,185 Boxes and 790 Boxes of Frozen Fillets (and 1 other seizure action against a similar product). Default decrees of destruction. (F. & D. Nos. 45059, 45060. Sample Nos. 58865–D, 58866–D.)

These products had been shipped in interstate commerce. At the time of examination, one lot was found to contain parasitic worms and the other lot was found to be in whole or in part decomposed.

On March 21, 1939, the United States attorney for the Middle District of Tennessee, acting upon a report by the Secretary of Agriculture, filed in the district court a libel against 1,185 boxes of ocean perch fillets and 790 boxes of whiting at Nashville, Tenn. The whiting only having been seized under the original libel, the United States attorney filed a libel on March 22, 1939, against the 1,185 boxes of ocean perch fillets. It was alleged in the libels that the articles had been shipped on or about February 27, 1939, by the Commonwealth Ice & Storage Co. from Boston, Mass.; and that they were adulterated in violation of the Food and Drugs Act. They were labeled "Ocean Perch Cape Anne" and "H & G Whiting."

Adulteration was alleged in that the articles consisted in whole or in part of filthy animal substances.

On April 24, 1939, the owner of the goods having petitioned that they be destroyed, judgment was entered ordering their destruction.

GROVER B. HILL, *Acting Secretary of Agriculture.*

31010. Adulteration of frozen fillets. U. S. v. 126 Boxes of Ocean Perch Layers. Default decree of condemnation and destruction. (F. & D. No. 45382. Sample No. 1967–D.)

This product contained parasitic worms.

On May 20, 1939, the United States attorney for the Middle District of Tennessee, acting upon a report by the Secretary of Agriculture, filed in the district court a libel praying seizure and condemnation of 126 boxes of ocean perch layers at Nashville, Tenn.; alleging that the article had been shipped in interstate commerce on or about April 14, 1939, by O'Donnell-Usen Fisheries Corporation from Boston, Mass.; and charging adulteration in violation of the Food and Drugs Act.

The article was alleged to be adulterated in that it consisted wholly or in part of a filthy animal substance.

On October 26, 1939, no claimant having appeared, judgment of condemnation was entered and the product was ordered destroyed.

GROVER B. HILL, *Acting Secretary of Agriculture.*

31011. Adulteration and misbranding of butter. U. S. v. Clifford R. Farnsworth (Clearwater Creamery Co.). Plea of guilty. Fine, $48. (F. & D. No. 42772. Sample Nos. 64616–D, 64617–D, 64619–D.)

This product contained less than 80 percent by weight of milk fat. Moreover, its containers failed to bear a statement of the quantity of the contents.

On October 20, 1939, the United States attorney for the District of Idaho, acting upon a report by the Secretary of Agriculture, filed in the district court an information against Clifford R. Farnsworth, trading as Clearwater Creamery Co., at Lewiston, Idaho, alleging shipment by said defendant within the period from on or about May 19, 1939, to on or about May 24, 1939, from the State of Idaho into the State of Washington, of quantities of butter which was adulterated and misbranded.

Adulteration was alleged in that a product which contained less than 80 percent by weight of milk fat had been substituted for butter, a product which should contain not less than 80 percent by weight of milk fat as prescribed by the act of March 4, 1923.

Misbranding was alleged in that the article was food in package form and the quantity of the contents was not plainly and conspicuously marked on the outside of the packages.

On November 6, 1939, a plea of guilty was entered by the defendant and the court imposed a fine of $48.

GROVER B. HILL, *Acting Secretary of Agriculture.*

31012. Adulteration of apples. U. S. v. 17 Crates and 8 Bushels of Apples. Default decree of condemnation and destruction. (F. & D. Nos. 44446, 44447. Sample Nos. 46079–D, 46081–D.)

This product bore spray residue containing lead and arsenic.

On November 17, 1938, the United States attorney for the Southern District of Illinois, acting upon a report by the Secretary of Agriculture, filed in the district court a libel praying seizure and condemnation of 17 crates and 8 bushels of apples at Decatur, Ill.; alleging that the article had been transported by D. H. Jordan on or about November 9, 1938, from Hartford, Mich., to himself at Decatur, Ill.; and charging that it was adulterated in violation of the Food and Drugs Act. A portion of the article was labeled: "George T. Otis Bangor, Michigan."

Adulteration was alleged in that the article contained poisonous and deleterious ingredients, namely, arsenic and lead, which might have rendered it harmful to health.

On December 22, 1939, no claimant having appeared, judgment of condemnation was entered and the product was ordered destroyed.

GROVER B. HILL, *Acting Secretary of Agriculture.*

31013. Misbranding of canned tomatoes. U. S. v. 909 Cases of Canned Tomatoes. Consent decrees of condemnation. Product released under bond for relabeling. (F. & D. No. 45578. Sample No. 63089–D.)

This product was substandard because it was not normally colored and was not labeled to indicate that it was substandard.

On or about December 2, 1939, the United States attorney for the Northern District of Mississippi, acting upon a report by the Secretary of Agriculture, filed in the district court a libel praying seizure and condemnation of 909 cases of tomatoes at Greenwood, Miss.; alleging that the article had been shipped by M. M. Craddock Canning Co., from Ripley, Tenn., within the period from on or about August 9 to on or about September 1, 1939; and charging that it was misbranded in violation of the Food and Drugs Act. The article was labeled in part: "Real Food Brand * * * Packed By Lake County Cooperative Association, Ridgely, Tennessee."

Misbranding was alleged in that the article was canned food and fell below the standard of quality and condition promulgated by the Secretary of Agriculture, since the tomatoes were not normally colored and its package or label did not bear a plain and conspicuous statement prescribed by regulation of this Department indicating that it fell below such standard.

On December 6, 1939, the Weaver Grocery Co., Greenwood, Miss., claimant, having consented to the entry of a decree, judgment of condemnation was entered, and the product was ordered released under bond conditioned that it be relabeled under the supervision of this Department.

GROVER B. HILL, *Acting Secretary of Agriculture.*

31014. Adulteration of candy. U. S. v. 7 Boxes, et al., of Candy. Default decree of condemnation and destruction. (F. & D. Nos. 43302, 43303, 43304, 43305. Sample Nos. 27669–D, 27670–D, 27671–D, 27672–D.)

This product had been shipped in interstate commerce and remained unsold and in the original packages. At the time of examination it was found to be insect-infested.

On or about August 23, 1938, the United States attorney for the Southern District of Illinois, acting upon a report by the Secretary of Agriculture, filed in the district court a libel praying seizure and condemnation of 35 boxes of candy at Springfield, Ill.; alleging that the article had been shipped on or about January 23, 1938, by Phyleen Candy Co. from Huntington, Ind.; and charging adulteration in violation of the Food and Drugs Act. The article was variously labeled in part: "Phyleen Delightful Candy Echo Bar [or "Cherry Nut," "Malted Milk," or "Cherry Tit Bit"]."

It was alleged to be adulterated in that it consisted in whole or in part of a filthy vegetable substance.

On December 22, 1939, no claimant having appeared, judgment of condemnation was entered and the product was ordered destroyed.

GROVER B. HILL, *Acting Secretary of Agriculture.*

31015. Adulteration of frozen crab meat. U. S. v. 3 Boxes of Frozen Crab Meat. Default decree of condemnation and destruction. (F. & D. No. 45518. Sample No. 43799–D.)

This product had been shipped in interstate commerce and remained unsold and in the original packages. At the time of examination it was found to be in part decomposed.

On June 22, 1939, the United States attorney for the Northern District of California, acting upon a report by the Secretary of Agriculture, filed in the district court a libel praying seizure and condemnation of 3 boxes, containing a total of seventy eight 5-pound cans of frozen crab meat, at San Francisco, Calif.; alleging that the article had been shipped by G. A. Williams from North Bend, Oreg., to Los Angeles, Calif., on or about July 16, 1938, and had been reshipped from Los Angeles to San Francisco on or about July 23, 1938; and charging that it was adulterated in violation of the Food and Drugs Act.

Adulteration was alleged in that the article consisted wholly or in part of a decomposed animal substance.

On November 30, 1939, no claimant having appeared, judgment of condemnation was entered and the product was ordered destroyed.

GROVER B. HILL, *Acting Secretary of Agriculture.*

31016. Adulteration and misbranding of butter. U. S. v. 17 Cases of Butter. Default decree of condemnation and destruction. (F. & D. No. 44686. Sample No. 38979–D.)

This product contained less than 80 percent by weight of milk fat.

On or about November 19, 1938, the United States attorney for the Southern District of Illinois, acting upon a report by the Secretary of Agriculture, filed in the district court a libel praying seizure and condemnation of 17 cases of butter at Granite City, Ill.; alleging that the article had been shipped in interstate commerce on or about October 29 and November 4, 1938, by the Missouri Valley Creamery Co. from Richmond Heights, Mo.; and charging that it was adulterated and misbranded in violation of the Food and Drugs Act.

Adulteration was alleged in that a product containing less than 80 percent by weight of milk fat had been substituted for butter, a product which should contain not less than 80 percent of milk fat as provided by the act of March 4, 1923.

The article was alleged to be misbranded in that it was labeled "Butter," which was false and misleading.

On December 22, 1939, no claimant having appeared, judgment of condemnation was entered and the product was ordered destroyed.

GROVER B. HILL, *Acting Secretary of Agriculture.*

31017. Adulteration of Mexican corn chips. U. S. v. 29 Cases of Tostadas. Default decree of condemnation and destruction. (F. & D. No. 41439. Sample No. 48987–C.)

This product had been shipped in interstate commerce and remained unsold and in the original packages. At the time of examination it was found to be rancid.

On January 15, 1938, the United States attorney for the Southern District of Illinois, acting upon a report by the Secretary of Agriculture, filed in the district court a libel praying seizure and condemnation of 29 cases of Tostadas at Granite City, Ill.; alleging that the article had been shipped on or about June 29, 1937, by the Tostadas Corporation from Brooklyn, N. Y.; and charging that it was adulterated in violation of the Food and Drugs Act.

Adulteration was alleged in that the article consisted in whole or in part of a decomposed vegetable substance.

On December 22, 1939, no claimant having appeared, judgment of condemnation was entered and the product was ordered destroyed.

GROVER B. HILL, *Acting Secretary of Agriculture.*

31018. Adulteration of candy. U. S. v. 12 Boxes of Candy. Default decree of condemnation and destruction. (F. & D. No. 43237. Sample No. 27667–D.)

This product had been shipped in interstate commerce and remained unsold and in the original packages. At the time of examination it was found to be insect-infested.

On August 8, 1938, the United States attorney for the Southern District of Illinois, acting upon a report by the Secretary of Agriculture, filed in the district court a libel praying seizure and condemnation of 12 boxes of candy

at Springfield, Ill.; alleging that the article had been shipped on or about May 23, 1938, by the Elmer Candy Co., Inc., from New Orleans, La.; and charging that it was adulterated in violation of the Food and Drugs Act. It was labeled in part: "Angel's Delight Devinity Candy."

Adulteration was alleged in that the article consisted in whole or in part of a filthy vegetable substance.

On December 22, 1939, no claimant having appeared, judgment of condemnation was entered and the product was ordered destroyed.

GROVER B. HILL, *Acting Secretary of Agriculture.*

31019. Adulteration of butter. U. S. v. Vilmer K. Berger (Berger Creamery Co.). Plea of guilty. Fine, $50 and costs. (F. & D. No. 42785. Sample No. 26874–D.)

This product contained less than 80 percent by weight of milk fat.

On November 20, 1939, the United States attorney for the District of Nebraska, acting upon a report by the Secretary of Agriculture, filed in the district court an information against Vilmer K. Berger, trading as the Berger Creamery Co., South Sioux City, Nebr., alleging shipment by said defendant in violation of the Food and Drugs Act, on or about May 31, 1939, from the State of Nebraska into the State of New York of a quantity of butter which was adulterated.

Adulteration was alleged in that a product which contained less than 80 percent by weight of milk fat had been substituted for butter, a product which should contain not less than 80 percent by weight of milk fat, as prescribed by the act of March 4, 1923.

On December 13, 1939, the defendant having entered a plea of guilty, the court imposed a fine of $50 and costs.

GROVER B. HILL, *Acting Secretary of Agriculture.*

31020. Misbranding of canned cherries. U. S. v. 297 Cases of Canned Cherries. Consent decree of condemnation. Product released under bond for relabeling. (F. & D. No. 45574. Sample No. 82617–D.)

This product was substandard because of the presence of excessive pits, and it was not labeled to indicate that it was substandard.

On November 13, 1939, the United States attorney for the Southern District of Florida, acting upon a report by the Secretary of Agriculture, filed in the district court a libel praying seizure and condemnation of 297 cases of canned cherries at Tampa, Fla.; alleging that the article had been shipped in interstate commerce on or about August 7, 1939, by the Washington Packers, Inc., from Sumner, Wash.; and charging misbranding in violation of the Food and Drugs Act. The article was labeled in part: "Inavale Brand Water Pack Red Sour Pitted Cherries."

Misbranding was alleged in that the article was canned food and fell below the standard of quality and condition promulgated by the Secretary of Agriculture, since there was present therein more than 1 cherry pit per 20 ounces of net contents, and its package or label did not bear a plain and conspicuous statement prescribed by regulation of this Department indicating that it fell below such standard.

On December 1, 1939, Berger & Rachelson, Inc., Tampa, Fla., claimant, having admitted the allegations of the libel, judgment of condemnation was entered and it was ordered that the product be released under bond, conditioned that it be relabeled under the supervision of this Department.

GROVER B. HILL, *Acting Secretary of Agriculture.*

31021. Misbranding of canned peas. U. S. v. 900 Cases of Peas. Default decree of condemnation. Product ordered delivered to charitable institutions. (F. &. D. No. 45568. Sample No. 47727–D.)

This product fell below the standard established by this Department because the peas were not immature, and it was not labeled to indicate that it was substandard.

On October 12, 1939, the United States attorney for the District of Columbia, acting upon a report by the Secretary of Agriculture, filed in the district court a libel against 900 cases of canned peas at Washington, D. C.; alleging that the article had been shipped in interstate commerce on or about August 24 and 26, 1939, by A. W. Feeser & Co., Inc., from Taneytown, Md.; and charging misbranding in violation of the Food and Drugs Act. The article was labeled in part: "Feeser's Brand Pod Run Sugared Peas."

It was alleged to be misbranded in that it was canned food and fell below the standard of quality and condition promulgated by the Secretary of Agriculture for such canned food since the peas were not immature, and its package or label did not bear a plain and conspicuous statement prescribed by regulation of this Department indicating that it fell below such standard.

On November 3, 1939, no claimant having appeared, judgment of condemnation was entered and the product was ordered delivered to charitable institutions for their use and not for sale.

GROVER B. HILL, *Acting Secretary of Agriculture.*

31022. Misbranding of canned peas. U. S. v. 94 Cases of Canned Peas. Decree of condemnation. Product ordered delivered to a charitable institution. (F. & D. No. 45566. Sample No. 59518–D.)

This product was substandard because the peas were not immature, and it was not labeled to indicate that it was substandard.

On October 6, 1939, the United States attorney for the Southern District of New York, acting upon a report by the Secretary of Agriculture, filed in the district court a libel praying seizure and condemnation of 94 cases of canned peas at New York, N. Y.; alleging that the article had been shipped in interstate commerce on or about July 18, 1939, by Kathleen A. Leister from Westminster, Md.; and charging misbranding in violation of the Food and Drugs Act. It was labeled in part: "Elmdale Run O'Pod Early June Peas National Retailer-Owned Grocers, Inc. Distributors * * * Chicago, Ill."

The article was alleged to be misbranded in that it was canned food and fell below the standard of quality and condition promulgated by the Secretary of Agriculture since the peas were not immature, and the package or label did not bear a plain and conspicuous statement prescribed by regulation of this Department indicating that it fell below such standard.

On November 6, 1939, no claimant having appeared, judgment of condemnation was entered and it was ordered that the product be delivered to a charitable institution and that the labels be removed or defaced.

GROVER B. HILL, *Acting Secretary of Agriculture.*

31023. Misbranding of cottonseed screenings. U. S. v. Cairo Meal & Cake Co. Plea of guilty. Fine, $263 and costs. (F. & D. No. 42722. Sample No. 4159–D.)

This product contained less protein than was declared on the label.

On June 6, 1939, the United States attorney for the Eastern District of Illinois, acting upon a report by the Secretary of Agriculture, filed in the district court an information against the Cairo Meal & Cake Co., a corporation, Cairo, Ill., alleging shipment by said company on or about November 29, 1938, from the State of Illinois into the State of Kansas of a quantity of cottonseed screenings which were misbranded in violation of the Food and Drugs Act. The article was labeled in part: (Tag) "Miss Cairo Brand."

The article was alleged to be misbranded in that the statement on the tag, "Protein—41.00%," was false and misleading and was borne on the said tag so as to deceive and mislead the purchaser since it contained less than 41 percent, namely, not more than 37.06 percent of protein.

On November 22, 1939, the defendant having entered a plea of guilty, the court imposed a fine of $263 and costs.

GROVER B. HILL, *Acting Secretary of Agriculture.*

31024. Adulteration of frozen shrimp. U. S. v. 500 Cases of Frozen Shrimp. Consent decree of condemnation. Product ordered released under bond. (F. & D. No. 44646. Sample No. 20368–D.)

This product was in part decomposed.

On December 21, 1938, the United States attorney for the Southern District of California, acting upon a report by the Secretary of Agriculture, filed in the district court a libel praying seizure and condemnation of 500 cases of frozen shrimp at Wilmington, Calif.; alleging that the article had been shipped in interstate commerce on or about December 11, 1938, by Joe Grasso & Son from Galveston, Tex.; and charging adulteration in violation of the Food and Drugs Act. The article was labeled in part: "Crescent Brand Fresh Frozen Shrimp."

It was alleged to be adulterated in that it consisted in whole or in part of a decomposed animal substance.

On September 13, 1939, Joe Grasso & Son, claimant, having admitted the allegations of the libel, judgment of condemnation was entered and the product

was ordered released under bond, conditioned that it be thawed out and sorted by hand and that all shrimp showing evidence of decomposition be rejected and disposed of for purposes other than human consumption.

GROVER B. HILL, *Acting Secretary of Agriculture.*

31025. Adulteration and misbranding of alfalfa meal. U. S. v. Saunders Mills, Inc. Plea of nolo contendere. Fine, $150 and costs. (F. & D. No. 42690. Sample Nos. 5741-D, 22000-D.)

This product consisted in part of alfalfa stem meal and contained less crude protein and more crude fiber than that declared on its label.

On May 19, 1939, the United States attorney for the Northern District of Ohio, acting upon a report by the Secretary of Agriculture, filed in the district court an information against the Saunders Mills, Inc., Toledo, Ohio, alleging shipment by said company in violation of the Food and Drugs Act, on or about August 8, 1938, from the State of Ohio into the State of Indiana, of quantities of alfalfa meal which was adulterated and misbranded. The article was labeled in part: "Dehydrated Alfalfa Meal Carotene Brand Xtra Fine."

The article was alleged to be adulterated in that alfalfa stem meal had been substituted in whole or in part for alfalfa meal.

It was alleged to be misbranded in that the statements, "Alfalfa Meal," "Crude Protein, not less than 13.00 Per Cent," and "Crude Fibre, not more than 33.0 Per Cent," borne on the label, were false and misleading since the article did not consist entirely of alfalfa meal but contained less than 13 percent of crude protein and more than 33 percent of crude fiber.

On October 3, 1939, a plea of nolo contendere having been entered on behalf of the defendant, the court imposed a fine of $150 and costs.

GROVER B. HILL, *Acting Secretary of Agriculture.*

31026. Adulteration and misbranding of wheat gray shorts. U. S. v. The Western Star Mill Co. Plea of guilty. Fine, $50. (F. & D. No. 42743. Sample No. 3920-D.)

Wheat brown shorts had been substituted in whole or in part for this product. It contained crude fiber in excess of the amount declared on the label.

On August 25, 1939, the United States attorney for the District of Kansas, acting upon a report by the Secretary of Agriculture, filed in the district court an information against the Western Star Mill Co., a corporation, Salina, Kans., alleging shipment by said company in violation of the Food and Drugs Act, on or about December 15, 1938, from the State of Kansas into the State of Texas, of a quantity of wheat gray shorts that were adulterated and misbranded.

Adulteration was alleged in that wheat brown shorts had been substituted in whole or in part for wheat gray shorts, which the article purported to be.

Misbranding was alleged in that the statements, "Wheat Gray Shorts" and "Crude Fiber not more than 6.00 Per Cent," borne on the tag, were false and misleading and were borne on the said tag so as to deceive and mislead the purchaser, since the said article did not consist wholly of wheat gray shorts, but did consist in whole or in part of wheat brown shorts, and it contained more than 6 percent, namely, not less than 7.13 percent of crude fiber.

On October 6, 1939, a plea of guilty was entered on behalf of the defendant and the court imposed a fine of $50.

GROVER B. HILL, *Acting Secretary of Agriculture.*

31027. Adulteration of dried peaches and dried apricots. U. S. v. Dominick Schiro (D. Schiro). Plea of nolo contendere. Fine, $50. (F. & D. No. 42768. Sample Nos. 37147-D, 37148-D.)

These shipments of dried fruit were found to contain dead insects, larvae and cocoons, insect and rodent excreta, and mold.

On October 24, 1939, the United States attorney for the Northern District of California, acting upon a report by the Secretary of Agriculture, filed in the district court an information against Dominick Schiro, trading as D. Schiro at San Jose, Calif., alleging that on or about March 21, 1939, the defendant delivered to a transportation company at San Francisco, Calif., for shipment by said transportation company in interstate commerce from San Francisco, Calif., to New York, N. Y., quantities of dried peaches and dried

apricots that were adulterated in violation of the Food and Drugs Act. They were labeled in part: "Packed for Walter M. Field & Co., San Francisco, Calif., J M New York."

Adulteration was alleged in that the articles consisted in part of filthy, decomposed, and putrid vegetable and animal substances.

On January 26, 1940, the defendant entered a plea of nolo contendere, and the court imposed a fine of $50.

GROVER B. HILL, *Acting Secretary of Agriculture.*

31028. Adulteration of dried peaches and dried apricots. U. S. v. Ronald R. Mack (Walter M. Field & Co.). Plea of nolo contendere. Fine, $200. (F. & D. No. 42769. Sample Nos. 37147–D, 37148–D.)

These shipments of dried fruits contained dead insects, larvae and cocoons, insect and rodent excreta, and mold.

On October 25, 1939, the United States attorney for the Northern District of California, acting upon a report by the Secretary of Agriculture, filed in the district court an information against Ronald R. Mack, trading as Walter M. Field & Co., San Francisco, Calif., alleging shipment by said defendant in violation of the Food and Drugs Act, on or about March 21, 1939, from the State of California into the State of New York, of quantities of dried peaches and dried apricots that were adulterated.

The articles were alleged to be adulterated in that they consisted in part of filthy, decomposed, and putrid vegetable and animal substances.

On January 23, 1940, a plea of nolo contendere was entered by the defendant and the court imposed a fine of $200.

GROVER B. HILL, *Acting Secretary of Agriculture.*

31029. Adulteration of butter. U. S. v. Midwest Dairies, Inc. Plea of guilty. Fine, $400. (F. & D. No. 42763. Sample Nos. 43309–D, 43788–D, 56060–D, 56145–D, 56148–D, 56154–D.)

The products involved in this shipment contained less than 80 percent by weight of milk fat.

On October 3, 1939, the United States attorney for the District of New Mexico, acting upon a report by the Secretary of Agriculture, filed in the district court an information against the Midwest Dairies, Inc., trading at Portales, N. Mex., alleging shipment by said defendant in violation of the Food and Drugs Act within the period from on or about April 11 to on or about May 27, 1939, from the State of New Mexico into the State of California of quantities of butter that was adulterated.

Adulteration was alleged in that a product which contained less than 80 percent by weight of milk fat had been substituted for butter, a product which should contain not less than 80 percent by weight of milk fat as prescribed by the act of March 4, 1923.

On March 16, 1940, a plea of guilty having been entered on behalf of the defendant, the court imposed a fine of $400.

GROVER B. HILL, *Acting Secretary of Agriculture.*

31030. Adulteration and misbranding of Frute-Ade. U. S. v. Alexander Rosenthal. Plea of guilty. Fine, $25. (F. & D. No. 39789. Sample Nos. 35070–C to 35076–C, incl.)

These products were labeled to indicate that they derived their fruit characteristics from fruit juices; whereas they consisted of artificially colored acid solutions containing little, if any, fruit juices. With the exception of the lemon, lemon-lime, and orange, they were also artificially flavored. The quantity of contents of the bottles was less than that declared on the label.

On March 2, 1939, the United States attorney for the District of New Jersey, acting upon a report by the Secretary of Agriculture, filed in the district court an information against Alexander Rosenthal, Trenton, N. J., alleging shipment by said defendant in violation of the Food and Drugs Act on or about April 17, 1937, from the State of New Jersey into the State of Pennsylvania, of quantities of various flavored Frute-Ades which were adulterated and misbranded.

The articles were labeled in part: "Frute-Ade * * * Grape [or "Strawberry," "Cherry," "Raspberry," "Lemon," "Lemon-Lime," or "Orange"] Flavor * * * Atlantic Food Packing Co., Trenton, N. J."

The articles were alleged to be adulterated in that artifically colored acid solutions which contained little, if any, of the designated fruits, and which

were artificially colored, and with the exception of the lemon, lemon-lime, and orange were also artificially flavored, had been substituted for Frute-Ade grape, strawberry, cherry, raspberry, lemon, lemon-lime, or orange flavors, namely, beverages which derived their fruit characteristics from juices of the said fruits.

Misbranding was alleged in that the statements, "Frute-Ade * * * drink * * * grape [or "Strawberry," "Cherry," "Raspberry," "Lemon," "Lemon Lime," or "Orange"] flavor" and "2½ fl. oz.," borne on the bottle labels, were false and misleading and were borne on the labels so as to deceive and mislead the purchaser, in that they represented that the articles were beverages which derived their fruit characteristics from juices of the fruits designated, and that the bottles contained 2½ fluid ounces thereof; whereas they contained little, if any, fruit juices, and the bottles contained less than 2½ fluid ounces of the said articles. Misbranding was alleged further in that the articles were offered for sale and sold under the distinctive names of other articles; and in that they were foods in package form, and the quantity of the contents was not plainly and conspicuously marked on the outside of the packages.

On December 22, 1939, the defendant entered a plea of guilty and the court imposed a fine of $25.

GROVER B. HILL, *Acting Secretary of Agriculture.*

31031. Adulteration of butter. U. S. v. Spring Valley Butter Co., Inc. Plea of guilty. Fine, $210. (F. & D. No. 42775. Sample Nos. 57621–D, 57646–D, 57648–D, 57659–D, 57662–D, 57664–D, 57665–D.)

This product was found to be deficient in milk fat.

On November 6, 1939, the United States attorney for the District of Idaho, acting upon a report by the Secretary of Agriculture, filed in the district court an information against the Spring Valley Butter Co., Inc., of Nampa, Idaho, alleging shipment by said company in violation of the Food and Drugs Act, within the period from on or about March 30 to on or about May 27, 1939, from the State of Idaho into the State of California of quantities of butter which was adulterated in violation of the Food and Drugs Act.

The article was alleged to be adulterated in that a product which contained less than 80 percent by weight of milk fat had been substituted for butter, a product which should contain not less than 80 percent by weight of milk fat, as prescribed by the act of March 4, 1923.

On January 30, 1940, a plea of guilty having been entered on behalf of the defendant, a fine of $210 was imposed.

GROVER B. HILL, *Acting Secretary of Agriculture.*

31032. Misbranding of cottonseed nut cake. U. S. v. James W. Simmons, George A. Simmons, and Tom B. Simmons (Quanah Cotton Oil Co.). Pleas of guilty. Fine, $100. (F. & D. No. 42736. Sample No. 4156–D.)

This product contained a smaller percentage of protein than was declared on its label.

On July 24, 1939, the United States attorney for the Northern District of Texas, acting upon a report by the Secretary of Agriculture, filed in the district court an information against James W. Simmons, George A. Simmons, and Tom B. Simmons, trading as the Quanah Cotton Oil Co., Quanah, Tex., alleging that on or about October 10, 1938, the said defendants sold and delivered at Quanah, Tex., a quantity of cottonseed nut cake; that at the time of said sale and delivery the defendants gave the purchaser thereof a guaranty that the product was not adulterated or misbranded in violation of the Food and Drugs Act; that on or about October 10, 1938, the said cottonseed nut cake in the identical condition as when so sold and delivered was transported by the purchaser thereof from the State of Texas into the State of Kansas; that the article was misbranded in violation of the Food and Drugs Act; and that by reason of the said transportation, the said guaranty and the aforesaid misbranding, the defendants were amenable to the prosecution, fines, and other penalties which otherwise would attach to the shipper. The article was labeled in part: "43% Protein Cottonseed Cake and Meal—Prime Quality—Manufactured by Quanah Cotton Oil Company, Quanah, Texas."

Misbranding was alleged in that the statement "Protein not less than 43.00%," borne on the label, was false and misleading and was borne on the said label so as to deceive and mislead the purchaser, since the article contained less than 43 percent of protein, namely, not more than 40.06 percent of protein.

On November 6, 1939, pleas of guilty having been entered, the court imposed a fine of $100 against the defendants jointly.

GROVER B. HILL, *Acting Secretary of Agriculture.*

31033. Adulteration of frozen eggs. U. S. v. Swift & Co. Plea of nolo contendere. Fine, $275 and costs. (F. & D. No. 42771. Sample No. 43540–D.)

The frozen eggs involved in this shipment were in part decomposed.

On October 26, 1939, the United States attorney for the Northern District of Texas filed an information against Swift & Co., a corporation trading at Fort Worth, Tex., alleging that on or about April 14, 1939, the defendant company sold and delivered to a purchaser at Fort Worth, Tex., a quantity of frozen eggs; that at the time of said sale and delivery the defendant gave a guaranty to the purchaser to the effect that the product complied with the Federal Food and Drugs Act; that the said product in the identical condition as when so sold and delivered was shipped on or about April 14, 1939, by the purchaser thereof from the State of Texas into the State of California; that the said article was adulterated in violation of the Food and Drugs Act, and that by reason of the guaranty the defendant was amenable to the prosecutions and fines and other penalties which otherwise would attach to the shipper.

The article was alleged to be adulterated in that it consisted in whole or in part of a decomposed and putrid animal substance.

On January 15, 1940, a plea of nolo contendere was entered on behalf of the defendant and the court imposed a fine of $275 and costs.

GROVER B. HILL, *Acting Secretary of Agriculture.*

31034. Adulteration of butter. U. S. v. Southern Maid Dairies, Inc. Tried to the court and a jury. Verdict of guilty. Fine, $175 and costs. (F. & D. No. 42680. Sample No. 33946–D.)

This case involved a shipment of butter which contained less than 80 percent of milk fat.

On March 20, 1939, the United States attorney for the Western District of Virginia, acting upon a report by the Secretary of Agriculture, filed in the district court an information against the Southern Maid Dairies, Inc., Bristol, Va., alleging shipment by said company on or about August 15, 1938, from the State of Virginia into the State of Tennessee, of a quantity of butter which was adulterated in violation of the Food and Drugs Act.

Adulteration was alleged in that a product which contained less than 80 percent by weight of milk fat had been substituted for butter, a product which should contain not less than 80 percent by weight of milk fat as prescribed by the act of Congress of March 4, 1923.

On November 15, 1939, the defendant having entered a plea of not guilty, the case came on for trial before the court and a jury, and a verdict of guilty was returned. The defendant was sentenced to pay a fine of $175 together with costs of the proceedings.

GROVER B. HILL, *Acting Secretary of Agriculture.*

31035. Misbranding of cottonseed meal. U. S. v. Temple Cotton Oil Co. Plea of guilty. Fine, $50. (F. & D. No. 42748. Sample No. 4158–D.)

The product involved in this shipment contained a smaller percentage of protein than that declared on the label.

On August 28, 1939, the United States attorney for the Eastern District of Arkansas, acting upon a report by the Secretary of Agriculture, filed in the district court an information against the Temple Cotton Oil Co., a corporation, Little Rock, Ark., alleging shipment by said company in violation of the Food and Drugs Act on or about November 23, 1938, from the State of Arkansas into the State of Kansas, of a quantity of cottonseed meal which was misbranded. The article was labeled in part: "Quapaw Brand 41% Protein Cottonseed Meal-Cake."

It was alleged to be misbranded in that the statement "Protein 41.00%," borne on the tag attached to the sacks containing it, was false and misleading and was borne on the said tag so as to deceive and mislead the purchaser since it contained less than 41 percent of protein, namely, not more than 39 percent.

On October 17, 1939, a plea of guilty having been entered on behalf of the defendant, the court imposed a fine of $50.

GROVER B. HILL, *Acting Secretary of Agriculture.*

31036. Adulteration of frozen eggs. U. S. v. Cudahy Packing Company of Louisiana, Ltd., Plea of guilty. Fine, $60. (F. & D. No. 42770. Sample No. 62412–D.)

This case involved a shipment of frozen eggs which were in part decomposed. Samples examined also were found to contain miscellaneous filth, bits of meat, and excreta.

On October 12, 1939, the United States attorney for the Southern District of Texas, acting upon a report by the Secretary of Agriculture, filed in the district court an information against the Cudahy Packing Company of Louisiana, Ltd., a corporation trading at Cuero, Tex., alleging shipment by said defendant in violation of the Food and Drugs Act on or about April 18, 1939, from the State of Texas into the State of Louisiana, of a quantity of frozen eggs that were adulterated. The article was labeled in part: "Cudahy's Frozen Sunlight Eggs."

Adulteration was alleged in that the article consisted in whole or in part of a filthy, decomposed, and putrid animal substance.

On December 14, 1939, a plea of guilty having been entered on behalf of the defendant, the court imposed a fine of $60.

GROVER B. HILL, *Acting Secretary of Agriculture.*

31037. Adulteration of wheat gray shorts and scourings. U. S. v. The O. A. Cooper Co. Plea of nolo contendere. Fine, $50. (F. & D. No. 42782. Sample No. 5972–D.)

Wheat brown shorts and scourings had been substituted in whole or in part for this product.

On February 2, 1940, the United States attorney for the District of Nebraska, acting upon a report by the Secretary of Agriculture, filed in the district court an information against the O. A. Cooper Co., a corporation, Humboldt, Nebr., alleging shipment by said defendant in violation of the Food and Drugs Act on or about May 17, 1939, from the State of Nebraska into the State of Kansas, of a quantity of wheat gray shorts and scourings that were adulterated.

The article was alleged to be adulterated in that wheat brown shorts and scourings had been substituted in whole or in part for wheat gray shorts and scourings.

On February 24, 1940, a plea of nolo contendere was entered on behalf of the defendant, and the court imposed a fine of $50.

GROVER B. HILL, *Acting Secretary of Agriculture.*

31038. Misbranding of butter. U. S. v. J. Eastman Hatch (Trustee in Bankruptcy of Mutual Creamery Co.). Plea of guilty. Fine, $10. (F. & D. No. 42776. Sample Nos. 27379–D, 27380–D.)

This product was short of the declared weight.

On November 13, 1939, the United States attorney for the District of Colorado, acting upon a report by the Secretary of Agriculture, filed in the district court an information against J. Eastman Hatch, trustee in bankruptcy of the Mutual Creamery Co., alleging shipment by said defendant on or about May 13, 1939, from the State of Colorado into the State of Arizona, of a quantity of butter which was misbranded in violation of the Food and Drugs Act as amended. The article was labeled in part: "Maid O'Clover Four-in-one Butter One Pound Net * * * Manufactured & Distributed By Mutual Creamery Company, Grand Junction, Colorado."

It was alleged to be misbranded in that the statement on the cartons, "One Pound Net," was false and misleading and was borne on the said cartons so as to deceive and mislead the purchaser since they contained less than 1 pound net of the article. Misbranding was alleged further in that the article was food in package form and the quantity of contents was not plainly and conspicuously marked on the outside of the package, since the statement made was not a true and correct statement of the quantity of contents.

On March 15, 1940, the defendant entered a plea of guilty and the court imposed a fine of $10.

GROVER B. HILL, *Acting Secretary of Agriculture.*

31039. Adulteration of butter. U. S. v. St. Stephens Cooperative Creamery Association. Plea of guilty. Fine, $25. (F. & D. No. 42762. Sample Nos. 51542–D, 51734–D.)

This case involved a shipment of butter which contained less than 80 percent by weight of milk fat.

On February 26, 1940, the United States attorney for the District of Minnesota, acting upon a report by the Secretary of Agriculture, filed in the district

court an information against St. Stephens Cooperative Creamery Association, a corporation, St. Stephens, Minn., alleging shipment by said defendant in violation of the Food and Drugs Act, on or about April 22, 1939, from the State of Minnesota into the State of Pennsylvania of a quantity of butter which was adulterated.

Adulteration was alleged in that a product which contained less than 80 percent by weight of milk fat had been substituted for butter, a product which should contain not less than 80 percent by weight of milk fat as prescribed by the act of March 4, 1923.

On February 26, 1940, a plea of guilty was entered on behalf of the defendant and the court imposed a fine of $25.

GROVER B. HILL, *Acting Secretary of Agriculture.*

31040. Adulteration and misbranding of wheat gray shorts and screenings. U. S. v. Commander-Larabee Milling Co. (The Larabee Flour Mills Co.). Plea of guilty. Fine, $50. (F. & D. No. 42758. Sample No. 5969–D.)

Brown shorts with screenings had been substituted for gray shorts with screenings in the product involved in this shipment.

On November 28, 1939, the United States attorney for the Western District of Missouri, acting upon a report by the Secretary of Agriculture, filed in the district court an information against the Commander-Larabee Milling Co., a corporation trading as the Larabee Flour Mills Co., at Kansas City, Mo., alleging shipment by said company on or about March 7, 1939, from the State of Missouri into the State of Kansas, of a quantity of wheat gray shorts with screenings, which were adulterated and misbranded in violation of the Food and Drugs Act.

Adulteration was alleged in that wheat brown shorts with screenings had been substituted for wheat gray shorts with screenings.

Misbranding was alleged in that the statements, "Wheat Gray Shorts with Ground Wheat Screenings" and "Crude Fibre, not more than 6.00%," borne on the tag attached to the sacks containing the article, were false and misleading and were borne on the said tag so as to deceive and mislead the purchaser, since the article did not consist of wheat gray shorts with ground wheat screenings but did consist of wheat brown shorts with ground wheat screenings, and it contained not less than 7.29 percent of crude fiber.

On January 25, 1940, a plea of guilty was entered on behalf of the defendant and the court imposed a fine of $50.

GROVER B. HILL, *Acting Secretary of Agriculture.*

31041. Misbranding of canned cherries. U. S. v. 948 Cases of Cherries. Consent decree of condemnation. Product ordered released under bond to be relabeled. (F. & D. No. 45591. Sample No. 46850–D.)

This product was substandard because of the presence of excessive pits, and it was not labeled to indicate that it was substandard.

On or about February 5, 1940, the United States attorney for the Northern District of Illinois, acting upon a report by the Secretary of Agriculture, filed in the district court a libel praying seizure and condemnation of 948 cases of canned cherries at Chicago, Ill.; alleging that the article had been shipped in interstate commerce on or about August 31, 1939, by Keystone Cooperative Grape Association from Erie, Pa.; and charging that it was misbranded in violation of the Food and Drugs Act. It was labeled in part: "North East * * * Red Sour Pitted Cherries."

The article was alleged to be misbranded in that it was canned food and fell below the standard of quality and condition promulgated by the Secretary of Agriculture, since there was present more than 1 cherry pit per 20 ounces of net contents, and its package or label did not bear a plain and conspicuous statement prescribed by regulation of this Department indicating that it fell below such standard.

On February 28, 1940, Keystone Cooperative Grape Association, claimant, having admitted the allegations of the libel, judgment of condemnation was entered, and it was ordered that the product be released under bond conditioned that it be relabeled in compliance with the law.

GROVER B. HILL, *Acting Secretary of Agriculture.*

31042. Adulteration of frozen strawberries. U. S. v. 55 Barrels of Frozen Strawberries. Consent decree of condemnation. Product ordered released under bond. (F. & D. No. 45131. Sample No. 36597–D.)

This product had been shipped in interstate commerce and remained unsold and in the original package. At the time of examination a portion of the berries were found to be moldy.

On April 1, 1939, the United States attorney for the Eastern District of Oklahoma, acting upon a report by the Secretary of Agriculture, filed in the district court a libel against 55 barrels of frozen strawberries at Muskogee, Okla.; alleging that the article had been shipped in interstate commerce on or about March 11, 1939, by Allen Fruit Co. from Seattle, Wash.; and charging adulteration in violation of the Food and Drugs Act. On December 19, 1939, the libel was amended.

It was alleged in the amended libel that the article was adulterated in that it consisted wholly or in part of a decomposed vegetable substance.

On December 19, 1939, the Allen Fruit Co., claimant, having admitted the allegations of the libel, judgment of condemnation was entered, and it was ordered that the product be released under bond conditioned that the strawberries be defrosted and the good ones segregated and separated from the moldy berries under the supervision of this Department.

GROVER B. HILL, *Acting Secretary of Agriculture.*

31043. Misbranding of canned cherries. U. S. v. 22 Cases of Canned Cherries. Default decree of condemnation and destruction. (F. & D. No. 45584. Sample No. 70986–D.)

This product was substandard because of the presence of excessive pits, and it was not labeled to indicate that it was substandard.

On January 4, 1940, the United States attorney for the District of Idaho, acting upon a report by the Secretary of Agriculture, filed in the district court a libel praying seizure and condemnation of 22 cases of canned cherries at Pocatello, Idaho; alleging that on or about November 21, 1939, the Zions Wholesale Grocery shipped the article to themselves, in their own truck, from the Woods Cross Canning Co., of Clearfield, Utah; and charging that it was misbranded in violation of the Food and Drugs Act. It was labeled in part: "Woods Cross Brand Red Sour Pitted Cherries * * * Packed by Woods Cross Canning Co. Woods Cross, Utah."

The article was alleged to be misbranded in that it was canned food and fell below the standard of quality and condition promulgated by the Secretary of Agriculture in that the fruit was not pitted since there was present more than 1 cherry pit per each 20 ounces of net contents, and its package or label did not bear a plain and conspicuous statement prescribed by regulation of this Department indicating that it fell below such standard.

On February 23, 1940, no claimant having appeared, judgment of condemnation was entered and the product was ordered destroyed.

GROVER B. HILL, *Acting Secretary of Agriculture.*

31044. Misbranding of canned tomatoes. U. S. v. 71 Cases of Tomatoes. Default decree of condemnation and destruction. (F. & D. No. 45567. Sample No. 61128–D.)

This product was substandard because it was not normally colored and contained excessive peel and blemishes, and it was not labeled to indicate that it was substandard.

On October 9, 1739, the United States attorney for the Southern District of Mississippi, acting upon a report by the Secretary of Agriculture, filed in the district court a libel praying seizure and condemnation of 71 cases of canned tomatoes at Picayune, Miss.; alleging that the article had been shipped in interstate commerce on or about July 31, 1939, by John T. Hall from New Orleans, La.; and charging misbranding in violation of the Food and Drugs Act. The article was labeled in part: "Ret Brand Tomatoes."

It was alleged to be misbranded in that it was canned food and fell below the standard of quality and condition promulgated by the Secretary of Agriculture in that the fruit was not normally colored, it was not peeled nor trimmed, and its package or label did not bear a plain and conspicuous statement prescribed by regulation of this Department indicating that it fell below such standard.

On February 20, 1940, no claimant having appeared, judgment of condemnation was entered and the product was ordered destroyed.

GROVER B. HILL, *Acting Secretary of Agriculture.*

31045. Misbranding of canned cherries. U. S. v. 235 Cases of Red Pitted Cherries. Product adjudged misbranded and ordered released under bond to be relabeled. (F. & D. No. 45583. Sample No. 67114–D.)

This product was substandard because of the presence of excessive pits, and it was not labeled to indicate that it was substandard.

On January 2, 1940, the United States attorney for the Western District of Oklahoma, acting upon a report by the Secretary of Agriculture, filed in the district court a libel praying seizure and condemnation of 235 cases of canned cherries at El Reno, Okla.; alleging that the article had been transported in interstate commerce on or about August 5, 1939, by the El Reno Wholesale Grocery Co. from Canon City, Colo., in their own truck; and charging that it was misbranded in violation of the Food and Drugs Act. It was labeled in part: (Can) "True Blue Choice Water Pack Red Pitted Cherries * * * Packed By Colorado Packing Plant, Canon City, Colo."

The article was alleged to be misbranded in that it was canned food and fell below the standard of quality and condition promulgated by the Secretary of Agriculture, since it was not pitted in that there was present more than 1 cherry pit per each 20 ounces of net contents, and its package label did not bear a plain and conspicuous statement prescribed by regulation of this Department, indicating that it fell below such standard.

On January 19, 1940, Colorado Packing Plant, claimant, having admitted the allegations of the libel, a decree was entered finding that the product was misbranded and should be condemned, and ordering that it might be released under bond conditioned that it be relabeled under the supervision of this Department.

GROVER B. HILL, *Acting Secretary of Agriculture.*

31046. Misbranding of canned tomatoes. U. S. v. 97 Cases of Canned Tomatoes. Default decree of condemnation. Product ordered delivered to charitable institutions. (F. & D. No. 45586. Sample No. 75571–D.)

This product was substandard because it was not normally colored, and it was not labeled to indicate that it was substandard.

On or about January 29, 1940, the United States attorney for the Eastern District of Kentucky, acting upon a report by the Secretary of Agriculture, filed a libel praying seizure and condemnation of 97 cases of canned tomatoes at Middlesboro, Ky.; alleging that the article had been shipped in interstate commerce on or about October 23, 1939, by J. S. Chittum from New Tazewell, Tenn.; and charging that it was misbranded in violation of the Food and Drugs Act. It was labeled in part: "Blue Bird Brand Hand Packed Tomatoes."

Misbranding was alleged in that the article was canned food and fell below the standard of quality and condition promulgated by the Secretary of Agriculture, since it was not normally colored, and its package or label did not bear a plain and conspicuous statement prescribed by regulation of this Department indicating that it fell below such standard.

On March 1, 1940, no claimant having appeared, judgment of condemnation was entered, and it was ordered that the product be delivered to charitable institutions in view of the fact that it was not deleterious nor unfit for human consumption.

GROVER B. HILL, *Acting Secretary of Agriculture.*

31047. Misbranding of canned cherries. U. S. v. 360 Cases of Canned Cherries. Product ordered released under bond for relabeling. (F. & D. No. 45579. Sample No. 47871–D.)

This product was substandard because of the presence of excessive pits, and it was not labeled to indicate that it was substandard.

On December 6, 1939, the United States attorney for the Western District of Virginia, acting upon a report by the Secretary of Agriculture, filed in the district court a libel against 360 cases of canned cherries; alleging that the article had been shipped in interstate commerce on or about September 7, 1939, by the W. N. Clark Co. from Rochester, N. Y.; and charging that it was misbranded in violation of the Food and Drugs Act. It was labeled in part: "Harmony Brand Red Sour Pitted Cherries in Water."

Misbranding was alleged in that the article was canned food and fell below the standard of quality and condition promulgated by the Secretary of Agriculture, since there was present more than 1 cherry pit per 20 ounces of net contents, and its package or label did not bear a plain and conspicuous statement prescribed by regulation of this Department indicating that it fell below such standard.

On January 6, 1940, W. N. Clark Co., claimant, having admitted the allegations of the libel, judgment was entered ordering that the product be released to the claimant under bond conditioned that it be relabeled under the supervision of this Department.

GROVER B. HILL, *Acting Secretary of Agriculture.*

31048. Adulteration of tomato catsup. U. S. v. 550 Cartons of Tomato Catsup. Default decree of condemnation and destruction. (F. & D. No. 45440. Sample No. 62710–D.)

Samples of this product were found to contain worms and insect fragments.

On June 3, 1939, the United States attorney for the Western District of Louisiana, acting upon a report by the Secretary of Agriculture, filed in the district court a libel against 550 cartons of tomato catsup at Lake Charles, La.; alleging that the article had been shipped on or about January 5, 1939, by the Val Vita Food Products, Inc., from Los Angeles, Calif.; and charging that it was adulterated in violation of the Food and Drugs Act. It was labeled in part: "Monte Rio Brand Tomato Catsup."

Adulteration was alleged in that the article consisted wholly or in part of a filthy vegetable substance.

On January 16, 1940, no claimant having appeared, judgment of condemnation was entered and it was ordered that the product be destroyed.

GROVER B. HILL, *Acting Secretary of Agriculture.*

31049. Adulteration of canned oysters. U. S. v. 221 Cases of Canned Oysters. Default decree of condemnation and destruction. (F. & D. No. 44552. Sample No. 37058–D.)

This product was in whole or in part decomposed.

On December 20, 1938, the United States attorney for the Northern District of California, acting upon a report by the Secretary of Agriculture, filed a libel against 221 cases of canned oysters at San Francisco, Calif.; alleging that the article had been shipped in interstate commerce on or about November 8, 1938, by the Anticich Canning Co. from New Orleans, La.; and charging that it was adulterated in violation of the Food and Drugs Act. It was labeled in part: "American Beauty Oysters."

Adulteration was alleged in that the article consisted wholly or in part of a decomposed animal substance.

On June 1, 1939, no claimant having appeared, judgment of condemnation was entered and the product was ordered destroyed.

GROVER B. HILL, *Acting Secretary of Agriculture.*

31050. Misbranding of canned pears. U. S. v. 75 Cases of Canned Pears. Consent decree of condemnation. Product released under bond for relabeling. (F. & D. Nos. 45592, 45593, 45594. Sample Nos. 97322–D, 97329–D, 97334–D.)

This product was substandard because it was packed in water, and it was not labeled to indicate that it was substandard.

On February 14, 1940, the United States attorney for the District of Wyoming, acting upon a report by the Secretary of Agriculture, filed in the district court a libel praying seizure and condemnation of 75 cases of canned pears in various lots at Laramie, Cheyenne, and Casper, Wyo.; alleging that the article had been shipped in interstate commerce on or about November 2, 1939, by the Pacific Fruit & Produce Co. from Seattle, Wash.; and charging that it was misbranded in violation of the Food and Drugs Act. * * * The article was labeled in part: "Nation's Garden Brand Bartlett Pears Packed for Fine Foods, Inc., Seattle–Minneapolis."

Misbranding was alleged in that the article was canned food and fell below the standard of quality and condition promulgated by the Secretary of Agriculture, since it was packed in water and its package or label did not bear a plain and conspicuous statement prescribed by regulation of this Department indicating that it fell below such standard.

On February 23, 1940, the Pacific Fruit & Produce Co., claimant, having consented to the entry of a decree, judgment of condemnation was entered and the product was ordered released under bond conditioned that it be properly relabeled under the supervision of this Department.

GROVER B. HILL, *Acting Secretary of Agriculture.*

31051. Misbranding of butter. U. S. v. Mutual Creamery Co. Plea of guilty. Fine, $80. (F. & D. No. 42766. Sample Nos. 27379–D, 27380–D, 41302–D.)

This case involved shipments of butter that was short weight.

On November 13, 1939, the United States attorney for the District of Colorado, acting upon a report by the Secretary of Agriculture, filed in the district court an information against the Mutual Creamery Co., a corporation trading at Grand Junction, Colo., alleging shipment by said company in violation of the Food and Drugs Act as amended, on or about July 6, 1938, from the State of Colorado into the State of Arizona of quantities of butter which was misbranded. The article was labeled in part: "Maid O'Clover Four in One Butter."

Misbranding was alleged in that the statement "One Pound Net," borne on the carton, was false and misleading and was borne on said carton so as to deceive and mislead the purchasers since the carton did not contain 1 pound net of the article but did contain a smaller amount. The article was alleged to be misbranded further in that it was food in package form and the quantity of contents was not plainly and conspicuously marked on the outside of the package, since the statement "One Pound Net" was not a true and correct statement of the quantity of contents.

On December 4, 1939, J. Eastman Hatch, trustee of the Mutual Creamery Co., debtor, filed a plea to the jurisdiction alleging that the district court for the District of Utah had exclusive jurisdiction of the defendant corporation and of its property wherever located and praying that the action be abated or if not, that it be transferred to the district court for the District of Utah. The plea to the jurisdiction was overruled by the court without opinion and on January 12, 1940, a plea of guilty having been entered on behalf of the defendant, the court imposed a fine of $80.

GROVER B. HILL, *Acting Secretary of Agriculture.*

31052. Misbranding of canned tomatoes. U. S. v. 19 Cases of Tomatoes. Default decree of condemnation. Product ordered delivered to a charitable or public welfare organization. (F. & D. No. 45587. Sample No. 75572–D.)

This product was substandard because it was not normally colored, and it was not labeled to indicate that it was substandard.

On January 11, 1940, the United States attorney for the Eastern District of Kentucky, acting upon a report by the Secretary of Agriculture, filed in the district court a libel praying seizure and condemnation of 19 cases of canned tomatoes at Middlesboro, Ky.; alleging that the article had been shipped in interstate commerce on or about November 1, 1939, by A. A. Richardson from Tazewell, Tenn.; and charging that it was misbranded in violation of the Food and Drugs Act. The article was labeled in part: "Walloon Springs Brand * * * Tomatoes."

It was alleged to be misbranded in that it was canned food and fell below the standard of quality and condition promulgated by the Secretary of Agriculture since it was not normally colored, and its package or label did not bear a plain and conspicuous statement prescribed by regulation of this Department indicating that it fell below such standard.

On February 21, 1940, no claimant having appeared, judgment of condemnation was entered and the product was ordered delivered to a charitable or public welfare organization.

GROVER B. HILL, *Acting Secretary of Agriculture.*

31053. Misbranding of canned tomatoes. U. S. v. 132½ Cases of Tomatoes. Consent decree of condemnation. Product ordered released under bond to be relabeled. (F. & D. No. 45582. Sample No. 75565–D.)

This product was substandard because the fruit units did not consist of whole or large pieces and the fruit was not normally colored, and it was not labeled to indicate that it was substandard.

On January 2, 1940, the United States attorney for the Eastern District of Kentucky, acting upon a report by the Secretary of Agriculture, filed in the district court a libel praying seizure and condemnation of 132½ cases of canned tomatoes at Pineville, Ky.; alleging that the article had been transported by the Chappell Grocery Co., in its own truck, from the Marion J. Ferguson Canning Co., Tazewell, Tenn.; and charging misbranding in violation of the Food and Drugs Act. The article was labeled in part: (Can) "Mono Brand * * * Tomatoes Packed by Marion J. Ferguson Canning Co."

It was alleged to be misbranded in that it was canned food and fell below the standard of quality and condition promulgated by the Secretary of Agriculture, since the fruit units did not consist of whole or large pieces and it was not

normally colored, and its package or label did not bear a plain and conspicuous statement prescribed by regulation of this Department indicating that it fell below such standard.

On January 22, 1940, Marion J. Ferguson, claimant, having admitted the allegations of the libel, judgment of condemnation was entered and it was ordered that the product be released under bond conditioned that it be relabeled under the supervison of this Department.

GROVER B. HILL, *Acting Secretary of Agriculture.*

31054. Misbranding of canned tomatoes. U. S. v. 21 Cases and 21 Cases of Tomatoes. Default decree of condemnation. Product ordered delivered to a charitable or public welfare organization. (F. & D. No. 45588. Sample Nos. 75573–D, 75574–D.)

This product was substandard because it was not normally colored, and it was not labeled to indicate that it was substandard.

On January 11, 1940, the United States attorney for the Eastern District of Kentucky, acting upon a report by the Secretary of Agriculture, filed in the district court a libel praying seizure and condemnation of 42 cases of canned tomatoes at Twila, Ky.; alleging that the article had been shipped in interstate commerce on or about October 15, 1939, by Vannoy & Bailey from Tazewell, Tenn.; and charging that it was misbranded in violation of the Food and Drugs Act. The article was labeled in part: "Powell's Mountain Brand Hand Packed * * * Tomatoes."

The article was alleged to be misbranded in that it was canned food and fell below the standard of quality and condition promulgated by the Secretary of Agriculture since it was not normally colored, and its package or label did not bear a plain and conspicuous statement prescribed by regulation of this Department indicating that it fell below such standard.

On February 21, 1940, no claimant having appeared, judgment of condemnation was entered and the product was ordered delivered to a charitable or public welfare organization.

GROVER B. HILL, *Acting Secretary of Agriculture.*

31055. Misbranding of canned peas. U. S. v. 35 Cases of Canned Peas. Default decree of condemnation. Product delivered to charitable institutions. (F. & D. No. 45595. Sample No. 86267–D.)

This product was substandard because the peas were not immature, and it was not labeled to indicate that it was substandard.

On February 15, 1940, the United States attorney for the Southern District of New York, alleging upon a report by the Secretary of Agriculture, filed a libel against 35 cases of canned peas at New York, N. Y.; alleging that the article had been shipped in interstate commerce on or about December 26, 1939, by the Lineboro Canning Co., Inc., from Lineboro, Md.; and charging that it was misbranded in violation of the Food and Drugs Act. It was labeled in part: "George's Brand Peas Early June."

Misbranding was alleged in that the article was canned food and fell below the standard of quality and condition promulgated by the Secretary of Agriculture, since the peas were not immature and its package or label did not bear a plain and conspicuous statement prescribed by regulation of this Department indicating that it fell below such standard.

On March 13, 1940, no claimant having appeared, judgment of condemnation was entered, and it was ordered that the labels be removed and that the product be delivered to charitable institutions.

GROVER B. HILL, *Acting Secretary of Agriculture.*

31056. Misbranding of canned peas. U. S. v. 575 Cases of Canned Peas. Decree of condemnation. Product released under bond for relabeling. (F. & D. No. 45559. Sample No. 73641–D.)

These canned peas were substandard because they were not immature, and they were not labeled to indicate that they were substandard.

On August 31, 1939, the United States attorney for the District of Rhode Island, acting upon a report by the Secretary of Agriculture, filed in the district court a libel praying seizure and condemnation of 575 cases of canned peas at Providence, R. I.; alleging that the article had been shipped on or about July 21, 26, and 28, 1939, from Bel Air, Md., by W. E. Robinson & Co., Inc.; and charging misbranding in violation of the Food and Drugs Act. The article was unlabeled at the time of shipment and was labeled at destination in part: "Early June Peas."

The article was alleged to be misbranded in that it was canned food and fell below the standard of quality and condition promulgated by the Secretary of Agriculture, since the peas were not immature, and its package or label did not bear a plain and conspicuous statement prescribed by regulation of this Department indicating that it fell below such standard.

On December 7, 1939, Bruder & Zweil, Inc., having appeared as claimant and having admitted the allegations of the libel, judgment of condemnation was entered, and the product was ordered released under bond conditioned that the labels be obliterated or destroyed and new labels describing the true nature of the product be affixed to each can.

GROVER B. HILL, *Acting Secretary of Agriculture.*

31057. Adulteration of tomato catsup. U. S. v. 227 Cases of Tomato Catsup. Default decree of condemnation and destruction. (F. & D. No. 45613. Sample No. 5470–D.)

Samples of this product were found to contain worm and insect fragments.

On July 6, 1939, the United States attorney for the Northern District of Texas filed a libel against 227 cases of tomato catsup at Dallas, Tex.; alleging that the article had been shipped in interstate commerce on or about March 31, 1939, by Val Vita Food Products, Inc., from Fullerton, Calif.; and charging that it was adulterated in that it consisted wholly or in part of a filthy substance. It was labeled in part: "Val Vita Brand Tomato Catsup * * * Orange County Canners, Inc. Fullerton, California."

On September 15, 1939, no claimant having appeared, judgment of condemnation was entered and the product was ordered destroyed.

GROVER B. HILL, *Acting Secretary of Agriculture.*

31058. Adulteration and misbranding of butter. U. S. v. Otto Ernst Mertz (Edon Creamery). Plea of nolo contendere. Fine of $150 and costs. Payment of fine suspended upon payment of costs. (F. & D. No. 39762. Sample Nos. 25873–C, 33722–C, 33778–C, 33779–C.)

This product contained less than 80 percent by weight of milk fat.

On November 16, 1937, the United States attorney for the Northern District of Ohio, acting upon a report by the Secretary of Agriculture, filed in the district court an information against Otto Ernst Mertz, trading as the Edon Creamery at Edon, Ohio, alleging shipment by said company in violation of the Food and Drugs Act on or about December 19, 1936, and May 11 and June 3, 1937, from the State of Ohio into the State of Michigan, of quantities of butter which was adulterated and misbranded. The article was labeled in part: "Dellwood Creamery Butter."

Adulteration was alleged in that a product which contained less than 80 percent by weight of milk fat had been substituted for butter, a product which should contain not less than 80 percent by weight of milk fat as prescribed by the act of March 4, 1923.

Misbranding was alleged in that the statement "Butter," borne on the carton, was false and misleading and was borne on the said carton so as to deceive and mislead the purchasers since the article contained less than 80 percent by weight of milk fat.

On January 15, 1940, a plea of nolo contendere was entered on behalf of the defendant, and the court imposed a fine of $150 and costs; but suspended payment of the fine upon payment of the costs, which amounted to $20.

GROVER B. HILL, *Acting Secretary of Agriculture.*

31059. Misbranding of canned peas. U. S. v. 85 Cases of Canned Peas. Decree of condemnation. Product released under bond for relabeling. (F. & D. No. 45565. Sample No. 69478–D.)

These canned peas were substandard because they were not immature, and they were not labeled to indicate that they were substandard.

On September 19, 1939, the United States attorney for the District of Rhode Island, acting upon a report by the Secretary of Agriculture, filed in the district court a libel praying seizure and condemnation of 85 cases of canned peas at Providence, R. I.; alleging that the article had been shipped in interstate commerce on or about August 26, 1939, from Baltimore, Md., by Bruder & Zweil, Inc., in their own truck; and charging misbranding in violation of the Food and Drugs Act. The article was labeled in part: "J. M. Berry Brand Early June Peas * * * The H. J. McGrath Co. Baltimore Md., U. S. A. Distributors."

It was alleged to be misbranded in that it was canned food and fell below the standard of quality and condition promulgated by the Secretary of Agri-

culture, since the peas were not immature, and its package or label did not bear a plain and conspicuous statement prescribed by this Department indicating that it fell below such standard.

On December 7, 1939, Bruder & Zweil, Inc., having appeared as claimant and having admitted the allegations of the libel, judgment of condemnation was entered, and the product was ordered released under bond conditioned that the labels be obliterated or destroyed and new labels describing the true nature of the product be affixed to each can.

GROVER B. HILL, *Acting Secretary of Agriculture.*

31060. Misbranding of canned peas. U. S. v. 72 Cases of Peas. Default decree of condemnation. Product ordered delivered to charitable institutions. (F. & D. No. 45596. Sample No. 77742–D.)

This product fell below the standard established by this Department since the peas were not immature, and it was not labeled to indicate that it was substandard.

On February 23, 1940, the United States attorney for the Eastern District of Pennsylvania filed in the district court a libel praying seizure and condemnation of 72 cases of canned peas at Philadelphia, Pa.; alleging that the article had been shipped in interstate commerce on or about October 13, 1939, by the B. F. Shriver Co. from Westminster, Md.; and charging misbranding in violation of the Food and Drugs Act. It was labeled in part: (Cans) "Shriver Brand June Peas."

The article was alleged to be misbranded in that the peas were not immature and its package or label did not bear a plain and conspicuous statement prescribed by the Secretary of Agriculture indicating that it fell below such standard.

On April 16, 1940, no claimant having appeared, judgment of condemnation was entered and the product was ordered delivered to charitable institutions.

GROVER B. HILL, *Acting Secretary of Agriculture.*

31061. Misbranding of canned tomatoes with puree from trimmings. U. S. v. 379 Cases of Canned Tomatoes with Puree from Trimmings. Consent decree of condemnation. Product released under bond for relabeling. (F. & D. No. 45597. Sample No. 92374–D.)

This product was substandard because it did not consist of whole or large pieces, and it was not labeled to indicate that it was substandard.

On or about February 26, 1940, the United States attorney for the Southern District of Florida, acting upon a report by the Secretary of Agriculture, filed a libel against 379 cases of the above-named product at Jacksonville, Fla.; alleging that the article had been shipped in interstate commerce on or about December 29, 1939, by Norman L. Waggoner, Inc., from San Francisco, Calif.; and charging that it was misbranded in violation of the Food and Drugs Act. It was labeled in part: "Iona Tomatoes with Puree from Trimmings * * * The Great Atlantic and Pacific Tea Company Distributors."

Misbranding was alleged in that the article was canned food and fell below the standard of quality and condition promulgated by the Secretary of Agriculture, since it did not consist of whole or large pieces, and its package or label did not bear a plain and conspicuous statement prescribed by regulation of this Department indicating that it fell below such standard.

On April 2, 1940, Norman L. Waggoner, Inc., claimant, having admitted the allegations of the libel, judgment of condemnation was entered and it was ordered that the product be released under bond conditioned that it be relabeled under the supervision of this Department.

GROVER B. HILL, *Acting Secretary of Agriculture.*

31062. Adulteration and misbranding of currant jelly and raspberry jam. U. S. v. 137 Cans of Currant Jelly and 187 Cans of Raspberry Jam. Default decree of condemnation and destruction. (F. & D. No. 39363. Sample Nos. 31251–C, 31252–C.)

The currant jelly contained less fruit juice and more sugar than standard jelly and contained added acid, pectin, and water. The raspberry jam contained less fruit and more sugar than standard jam and contained added pectin.

On April 12, 1937, the United States attorney for the District of Columbia, acting upon a report by the Secretary of Agriculture, filed in the district court a libel praying seizure and condemnation of 137 cans of currant jelly and 187 cans of raspberry jam at Washington, D. C.; alleging that the articles had been shipped in interstate commerce on or about February 26, 1937, by the Sun Distributing Co., Inc., from Brooklyn, N. Y.; and charging misbranding

in violation of the Food and Drugs Act. The article was labeled in part: "Nature's Own Pure Currant Jelly [or "Raspberry Jam"] Manufactured by Fresh Grown Preserve Corp. Brooklyn, New York."

The currant jelly was alleged to be adulterated in that excess sugar, added acid, pectin, water, and ash material had been mixed and packed therewith so as to reduce or lower its quality; in that a mixture of fruit juice, sugar, acid, pectin, water, and ash material, containing less fruit juice and more sugar than jelly should contain, had been substituted for jelly; and in that the article had been mixed in a manner whereby its inferiority was concealed.

The raspberry jam was alleged to be adulterated in that excess sugar, added pectin, and ash material had been mixed and packed therewith so as to reduce or lower its quality; in that a mixture of fruit, sugar, pectin, and ash material containing less fruit and more sugar than jam should contain, had been substituted for jam; and in that the article had been mixed in a manner whereby its inferiority was concealed.

Misbranding was alleged in that the statements, "Pure Currant Jelly" and "Pure Raspberry Jam," borne on the labels, were false and misleading and tended to deceive and mislead the purchaser when applied to articles resembling jelly and jam, but which contained less fruit than jelly and jam should contain. They were alleged to be misbranded further in that they were imitations of and were offered for sale under the distinctive names of other articles.

On June 21, 1938, the Sun Distributing Co., Inc., claimant, filed an answer denying that the products were adulterated and misbranded. On February 10, 1940, the case was set for hearing on March 5, 1940, and due notice thereof was served upon the claimant. No one appearing on behalf of the claimant at the hearing, the court entered the finding that the products were adulterated and misbranded as alleged in the libel On March 20, 1940, judgment of condemnation was entered and the products were ordered delivered to various charitable institutions.

GROVER B. HILL, *Acting Secretary of Agriculture.*

31063. Adulteration of tomato catsup, tomato puree, and tomato paste. U. S. v. Val Vita Food Products, Inc. Plea of guilty. Fine, $1,500. (F. & D. No. 42790. Sample Nos. 20248–D, 20300–D, 20456–D, 20471–D, 20472–D, 20552–D, 28189–D, 39424–D, 39810–D, 39811–D, 39847–D, 40978–D, 44756–D, 50544–D, 50549–D, 50911–D, 62516–D, 62520–D, 37780–D.)

Samples of these products were found to contain worm fragments, insects, and insect fragments. Rodent hairs also were found in certain samples.

On February 7, 1940, the United States attorney for the Southern District of California, acting upon a report by the Secretary of Agriculture, filed in the district court an information against the Val Vita Food Products, Inc., Fullerton, Calif., alleging shipment by said company in violation of the Food and Drugs Act, within the period from on or about April 9, 1938, to on or about January 15, 1939, from the State of California into the States of Nevada, Arizona, Oregon, Washington, Texas, New Jersey, and Alabama, of quantities of tomato catsup, tomato puree, and tomato paste that were adulterated. The articles were labeled in part, variously: "Val Vita Brand Tomato Catsup * * * Val Vita Food Products, Inc., Fullerton Calif."; "Monte Rio Brand Tomato Catsup * * * Orange County Canners, Inc. Fullerton Calif."; "Val Vita Brand Tomato Puree * * * Orange County Canners, Inc."; "Monte Rio Brand Tomato Catsup * * * Val Vita Food Products Inc."; "Val Vita Brand Tomato Paste * * * Val Vita Food Products Inc."; "Nation's Garden Brand Tomato Catsup * * * Packed for Fine Foods, Inc. Seattle Minneapolis."

The articles were alleged to be adulterated in that they consisted in whole or in part of filthy animal and vegetable substances, namely, tomato products containing worm fragments, insects, and insect fragments (and also rodent hairs that were found in certain samples). The information also charged violation of the Federal Food, Drug, and Cosmetic Act, reported in notice of judgment F. N. J. No. 629 published under that act.

On February 26, 1940, the defendant entered a plea of guilty to all counts and the court imposed a fine of $100 on each of the first 15 counts, all of which involved violations of the Food and Drugs Act; and suspended imposition of fine on the remaining 3 counts, of which 2 involved violation of the Food and Drugs Act and 1 involved violation of the Federal Food, Drug, and Cosmetic Act.

GROVER B. HILL, *Acting Secretary of Agriculture.*

31064. Adulteration of canned mackerel. U. S. v. 100 Cases of Canned Mackerel. Default decree of condemnation and destruction. (F. & D. No. 44106. Sample No. 33987–D.)

This product was in whole or in part decomposed.

On October 13, 1938, the United States attorney for the Eastern District of North Carolina, acting upon a report by the Secretary of Agriculture, filed in the district court a libel praying seizure and condemnation of 100 cases of canned mackerel at Zebulon, N. C.; alleging that the article had been shipped in interstate commerce on or about September 22, 1938, by Foote Bros. & Co. from Norfolk, Va.; and charging adulteration in violation of the Food and Drugs Act. The article was labeled in part: "Sunset Brand California Mackerel Packed by Southern California Fish Corporation Los Angeles Harbor Calif."

Adulteration was alleged in that the article consisted wholly or in part of a decomposed animal substance.

On March 11, 1940, no claimant having appeared, judgment of condemnation was entered and the product was ordered destroyed.

GROVER B. HILL, *Acting Secretary of Agriculture.*

31065. Misbranding of canned tomatoes. U. S. v. 99 Cases of Canned Tomatoes. Decree of condemnation and forfeiture. Product released under bond for relabeling. (F. & D. No. 45585. Sample No. 75570–D.)

This product was substandard because it was not normally colored, and it was not labeled to indicate that it was substandard.

On January 11, 1940, the United States attorney for the Eastern District of Kentucky, acting upon a report by the Secretary of Agriculture, filed in the district court a libel against 99 cases, each containing 24 cans, of tomatoes at Alva, Ky.; alleging that the article had been shipped in interstate commerce on or about October 18, 1939, by Vannoy & Bailey from Tazewell, Tenn.; and charging that it was misbranded. The article was labeled in part: "Powell's Mountain Brand Hand Packed Tomatoes."

It was alleged to be misbranded in that it was canned food and fell below the standard of quality and condition promulgated by the Secretary of Agriculture, since it was not normally colored, and its package or label did not bear a plain and conspicuous statement indicating that it fell below such standard.

On February 24, 1940, Vannoy & Bailey, claimants, having admitted that the product was misbranded and having consented to the entry of a decree, judgment of condemnation and forfeiture was entered and it was ordered that the product be released to the claimants under bond, for relabeling.

GROVER B. HILL, *Acting Secretary of Agriculture.*

31066. Adulteration of butter. U. S. v. Lisbon Cooperative Creamery Co., Inc. Plea of nolo contendere. Fine, $250 and costs. (F. & D. No. 42773. Sample No. 26878–D.)

This product was found to be deficient in milk fat.

On November 20, 1939, the United States attorney for the Southern District of Iowa, acting upon a report by the Secretary of Agriculture, filed in the district court an information against the Lisbon Cooperative Creamery Co., Inc., DeWitt, Iowa, alleging shipment in interstate commerce on or about June 6, 1939, from DeWitt, Iowa, into the State of New York, of a quantity of butter that was adulterated.

The article was alleged to be adulterated in that a product that contained less than 80 percent by weight of milk fat had been substituted for butter, a product that should contain not less than 80 percent by weight of milk fat, as prescribed by law.

On April 2, 1940, a plea of nolo contendere having been entered on behalf of the defendant, a fine of $250 and costs was imposed.

GROVER B. HILL, *Acting Secretary of Agriculture.*

31067. Misbranding of canned tomatoes. U. S. v. 223 Cases of Canned Tomatoes. Decree of condemnation and forfeiture. Product released under bond for relabeling. (F. & D. No. 45589. Sample No. 75568–D.)

This product was substandard because it was not normally colored, and it was not labeled to indicate that it was substandard.

On January 11, 1940, the United States attorney for the Eastern District of Kentucky, acting upon a report by the Secretary of Agriculture, filed in the district court a libel against 223 cases, each containing 24 cans, of tomatoes at Harlan, Ky.; alleging that the article had been shipped in interstate commerce on or about August 11, 1939, by the L. S. Sloat Canning Co. from

Morristown, Tenn.; and charging that it was misbranded. The article was labeled in part: "White's Best Brand Tomatoes * * * T. B. White Canning Company, Whitesburg, Tenn."

It was alleged to be misbranded in that it was canned food and fell below the standard of quality and condition promulgated by the Secretary of Agriculture, since it was not normally colored, and its package or label did not bear a plain and conspicuous statement prescribed by the Secretary of Agriculture indicating that it fell below such standard.

On February 15, 1940, the T. B. White Canning Co., Whitesburg, Tenn., having appeared as claimant and having admitted the allegations of the libel, judgment of condemnation and forfeiture was entered and it was ordered that the product be released under bond for relabeling.

GROVER B. HILL, *Acting Secretary of Agriculture.*

31068. Misbranding of canned peas. U. S. v. 447 Cases of Canned Peas. Consent decree of condemnation and forfeiture. Product released under bond for relabeling. (F. & D. No. 45601. Sample No. 98683–D.)

This product was substandard because the peas were not immature, and it was not labeled to indicate that it was substandard.

On March 11, 1940, the United States attorney for the Southern District of New York, acting upon a report by the Secretary of Agriculture, filed in the district court a libel against 447 cases, each containing 24 cans, of peas at New York, N. Y.; alleging that the article had been shipped in interstate commerce on or about October 17, 1939, by Albert W. Sisk & Son from Preston, Md.: and charging that it was misbranded. The article was labeled in part: "Fame and Glory Brand Run of Pod Early June Peas * * * Packed by John W. Humbert, Union Mills, Md."

It was alleged to be misbranded in that it was canned food and fell below the standard of quality and condition promulgated by the Secretary of Agriculture for such canned food, in that the peas were not immature, and its package or label did not bear a plain and conspicuous statement prescribed by the Secretary of Agriculture indicating that it fell below such standard.

On April 5, 1940, John W. Humbert, Union Mills, Md., having entered a claim for the product and having admitted the allegations of the libel, judgment of condemnation and forfeiture was entered and it was ordered that the product be released under bond for relabeling in compliance with the law.

GROVER B. HILL, *Acting Secretary of Agriculture.*

31069. Adulteration of maple sirup and maple sugar. U. S. v. 37 Drums of Maple Sirup and 218 Bags of Maple Sugar (and 2 other seizure actions against maple sirup). Products ordered released under bond to be deleaded. (F. & D. Nos. 45607 to 45612, incl. Sample Nos. 68994–D to 68999–D, incl.)

These products contained lead.

On June 27, 1939, the United States attorney for the District of Vermont, acting upon reports by the Secretary of Agriculture, filed libels against 282 drums of maple sirup and 218 bags of maple sugar at Burlington, Vt.; alleging that the articles had been shipped in interstate commerce by United Maple Products, Ltd., from Morrissette, Quebec, Canada, on or about June 8, 1939; and charging that they were adulterated in violation of the Food and Drug Act.

The articles were alleged to be adulterated in that they contained an added poisonous or deleterious ingredient, lead, which might have rendered them injurious to health.

On July 7, 1939, United Maple Products, Ltd., having appeared as claimant and having admitted the allegations of the libels, judgments were entered ordering that the products be released to the claimant, upon the execution of a bond conditioned that they be deleaded under the supervision of this Department.

GROVER B. HILL, *Acting Secretary of Agriculture.*

31070. Adulteration of whisky. U. S. v. 2 Quarts, 58 Pints, and 211 Half Pints of Whisky. Consent decree of condemnation and destruction. (F. & D. No. 45603. Sample No. 72457–D.)

Analysis showed that this product contained excessive quantities of aldehydes.

On January 29, 1940, the United States attorney for the District of Nebraska filed a libel against 2 quarts, 58 pints, and 211 half pints of whisky at Omaha, Nebr.; alleging that the article had been shipped in interstate commerce on or about September 2, 1938, by Wathen Bros. from Bardstown, Ky.; and charging

that it was adulterated in violation of the Food and Drugs Act. It was labeled in part: "Bourbon Valley Kentucky Straight Whiskey."

Adulteration was alleged in that a substance containing excessive quantities of aldehydes had been substituted wholly or in part for whisky; and had been mixed or packed therewith so as to reduce, lower, and injuriously affect its quality or strength.

On February 23, 1940, all parties having any claim or interest in the property having consented to the entry of a decree, judgment of condemnation was entered and the product was ordered destroyed.

GROVER B. HILL, *Acting Secretary of Agriculture.*

31071. Adulteration of canned mackerel. U. S. v. 520 Cases of Canned Mackerel. Decree entered ordering the decomposed portion destroyed and the remainder released. (F. & D. No. 44114. Sample No. 37649–D.)

This product was in part decomposed.

On October 13, 1938, the United States attorney for the Southern District of Indiana, acting upon a report by the Secretary of Agriculture, filed in the district court a libel praying seizure and condemnation of 520 cases of canned mackerel at Evansville, Ind.; alleging that the article had been shipped in interstate commerce on or about September 10, 1938, by Parrott & Co. from Los Angeles, Calif.; and charging that it was adulterated in violation of the Food and Drugs Act. It was labeled in part: "Dixiland Brand * * * San Carlos Canning Co. Monterey and Long Beach Calif."

Adulteration was alleged in that the article consisted wholly or in part of a decomposed animal substance.

On February 23, 1940, the San Carlos Canning Co. having filed a claim and answer and having executed a bond conditioned that the product should not be disposed of in violation of the law, the court ordered that a portion of the product identified by certain codes and totaling 85 cases, be destroyed and that the remainder of the seized goods be released.

GROVER B. HILL, *Acting Secretary of Agriculture.*

31072. Adulteration of dressed poultry. U. S. v. Paul Garnett Gray, Sr. (P. G. Gray). Plea of guilty. Fine, $25 and costs. (F. & D. No. 42711. Sample No. 26261–D.)

This case involved poultry which was found to be in whole or in part decomposed, diseased, and emaciated.

On November 14, 1939, the United States attorney for the Northern District of Iowa, acting upon a report by the Secretary of Agriculture, filed in the district court an information against Paul Garnett Gray, Sr., trading as P. G. Gray, at Estherville, Iowa, alleging shipment by said defendant in violation of the Food and Drugs Act on or about September 10, 1938, from the State of Iowa into the State of New York, of a quantity of poultry that was adulterated.

The article was alleged to be adulterated in that it consisted in whole or in part of a filthy, decomposed, and putrid animal substance. It was alleged to be adulterated further in that it consisted in part of the product of diseased animals, namely, poultry affected by disease at the time of slaughter.

On November 14, 1939, the defendant entered a plea of guilty and the court imposed a fine of $25 and costs.

GROVER B. HILL, *Acting Secretary of Agriculture.*

31073. Adulteration of cream. U. S. v. Vane S. Day (Barry County Produce). Plea of nolo contendere. Fine, $25 and costs. (F. & D. No. 42738. Sample Nos. 15541–D, 15545–D.)

This case involved cream which contained added mineral oil.

On August 3, 1939, the United States attorney for the Western District of Missouri, acting upon a report by the Secretary of Agriculture, filed in the district court an information against Vane S. Day, trading as the Barry County Produce at Cassville, Mo., alleging shipment by said defendant on or about July 18 and 29, 1938, from the State of Missouri into the State of Oklahoma, of quantities of cream which was adulterated.

The article was alleged to be adulterated in that a substance, namely, mineral oil, had been mixed and packed with it so as to reduce or lower or injuriously affect its quality or strength; and in that mineral oil had been substituted in part for cream, which it purported to be.

On February 26, 1940, the defendant entered a plea of nolo contendere, and the court imposed a fine of $25 with costs of the proceedings.

GROVER B. HILL, *Acting Secretary of Agriculture.*

31074. Adulteration of frozen shrimp. U. S. v. 194 Cases of Frozen Shrimp (and 2 other seizure actions against frozen shrimp). Consent decrees entered. Product released under bond for segregation of fit from unfit portion. Unfit portion condemned and ordered disposed of for purposes other than food. Good portion released. (F. & D. Nos. 44830, 44831, 44886. Sample Nos. 36153–D, 36154–D, 36155–D, 36772–D, 36774–D, 36775–D, 36776–D, 36778–D.)

This product had been shipped in interstate commerce and remained unsold and in the original packages. At the time of examination it was found to be in part decomposed.

On January 11, 12, and 16, 1939, the United States attorney for the Northern District of California, acting upon reports by the Secretary of Agriculture, filed in the district court libels praying seizure and condemnation of 828 cases of frozen shrimp at San Francisco, Calif.; alleging that the article had been shipped in interstate commerce on or about September 21 and November 25, 1938, by the Texas Fisheries from Galveston, Tex.; and charging that it was adulterated in violation of the Food and Drugs Act.

Adulteration was alleged in that the article consisted in part of a decomposed animal substance.

On August 5, 1939, the court having found that the product contained both decomposed as well as marketable merchandise, and the claimant having consented to condemnation of the decomposed portion, judgment was entered ordering that the good be segregated from the unfit and that the latter be disposed of in a manner approved by this Department, but that it should not be used for human or animal consumption.

GROVER B. HILL, *Acting Secretary of Agriculture.*

31075. Adulteration of frozen shrimp. U. S. v. 200 Cases of Frozen Shrimp (and 1 other seizure action against frozen shrimp). Consent decrees entered. Product released under bond for segregation of fit from unfit portion. Unfit portion condemned and disposed of for purposes other than food. Good portion released. (F. & D. Nos. 44756, 44780. Sample Nos. 36777–D, 36779–D, 43239–D.)

This product had been shipped in interstate commerce and remained unsold and in the original packages. At the time of examination it was found to be in part decomposed.

On January 4 and 18, 1939, the United States attorney for the Northern District of California, acting upon reports by the Secretary of Agriculture, filed in the district court libels praying seizure and condemnation of 346 cases of frozen shrimp at San Francisco, Calif.; alleging that the article had been shipped in interstate commerce on or about October 17 and December 28, 1938, by Joe Grasso & Son from Galveston, Tex.; and charging that it was adulterated in violation of the Food and Drugs Act. The article was labeled in part "Crescent Brand."

Adulteration was alleged in that the article consisted in part of a decomposed animal substance.

On August 5, 1939, the court having found that the product contained both decomposed as well as marketable merchandise, and the claimant having consented to condemnation of the decomposed portion, judgment was entered ordering that the good be segregated from the unfit and that the latter be disposed of in a manner approved by this Department, but that it should not be used for human or animal food.

GROVER B. HILL, *Acting Secretary of Agriculture.*

INDEX TO NOTICES OF JUDGMENT 31001–31075

[1] Prosecution contested.

U. S. GOVERNMENT PRINTING OFFICE: 1940

N. J., F. D. 31076–31105

Issued February 1941

FEDERAL SECURITY AGENCY

FOOD AND DRUG ADMINISTRATION

NOTICES OF JUDGMENT UNDER THE FOOD AND DRUGS ACT

[Given pursuant to section 4 of the Food and Drugs Act]

31076–31105

[Approved by the Federal Security Administrator, Washington, D. C., November 20, 1940]

31076. Alleged adulteration and misbranding of olive oil. U. S. v. Thirteen 1-Gallon Cans, et al., of Olive Oil. Tried to the court. Judgment for claimant. Decree dismissing libel and ordering product delivered to claimant. (F. & D. No. 37404. Sample Nos. 70407–B, 70408–B, 70409–B.)

U. S. v. 47 Gallon Cans of Olive Oil, et al. Decree dismissing libel and ordering product delivered to claimant. (F. & D. No. 37432. Sample No. 61227–B.)

These actions were instituted on charges based on the alleged presence of tea-seed oil in a product labeled "Pure Olive Oil."

On March 20 and 27, 1936, the United States attorneys for the Eastern District of Pennsylvania and the District of New Jersey, acting upon reports by the Secretary of Agriculture, filed libels against 13 gallon cans, 104 pint cans, and 296 half-pint cans of olive oil at Philadelphia, Pa.; and 47 gallon cans, 119 half-gallon cans, and 119 quarter-gallon cans of olive oil at Paterson, N. J., alleging that the article had been shipped in interstate commerce by the Agash Refining Corporation from Brooklyn, N. Y., the lot at Philadelphia, Pa., on or about September 24, 1934, and the lot at Paterson, N. J., on or about March 5, 1936; and charging that it was adulterated and misbranded.

It was alleged in the libels that the article was adulterated in that tea-seed oil had been mixed and packed with it so as to reduce or lower its quality or strength and had been substituted in whole or in part for olive oil, which it purported to be.

It was also alleged in the libels that the article was misbranded in that the following statements and designs on the can labels were false and misleading and tended to deceive and mislead the purchaser when applied to a product containing tea-seed oil: "Italian Product Pure [or "Virgin"] Olive Oil * * * Italy * * * Prodotti Italiana Olio D'Oliva Puro [or "Vergine"] Marca Agash Italia [design of olive tree] The Olive Oil contained in this can is pressed from fresh picked high grown fruit in Italy. It is * * * guaranteed to be absolutely pure. L'olio d'oliva contenuto in questa latta e stato spremuto da olive fresche raccolte in Italia. Especialmente raccommandato per tavola, medicinale ed e garantito assolutamente puro [designs of olive branches and Italian coat of arms with the Italian flag]." The libels alleged that the article was misbranded further in that it was offered for sale under the distinctive name of another article, namely, olive oil.

On May 6, 1936, the Modern Dairy & Grocery Co., Paterson, N. J., appeared as claimant for the product seized in the District of New Jersey and on May 22, 1936, an order was entered by the court permitting withdrawal of samples of the seized oil. On June 5, the United States attorney moved the court to dismiss the libel in said case, stating as the reason for said motion that the Government was unable to substantiate the allegations of the libel having found the product described therein to be pure and unadulterated and not misbranded. The court thereupon entered judgment dismissing the libel and ordering that the marshal deliver the seized goods to the claimants.

On February 16, 1937, the Agash Refining Corporation filed a claim for the product seized at Philadelphia, Pa., and also filed an answer denying that the product was adulterated or misbranded and praying that the libel be dismissed. On March 11, 1937, the case came on for trial before the court without a jury. Evidence was introduced on behalf of the claimant and the Government, the

taking of such testimony being concluded on March 24, 1937. The case was argued by counsel for the Government and for the claimant on April 2, 1937; and on April 5, 1937, the court handed down the following opinion:

DICKINSON, *Judge*. "We have had the benefit in this case of helpful aid. Libelant's counsel, or perhaps we should say proctor, has made an exhaustive study of his case, mastered and forcibly presented it, and counsel for the intervenor has shown himself proficient in all the learning of the schools in the science of chemistry.

"The case calls for some general comments. One is that it has taken up too much time. We confess our own contribution to this. We have been indulgent, perhaps overly indulgent, because the practical consequences of the decision strike much deeper than the mere judgment entered. The latter is in itself unimportant.

"The value of the product which is the subject of this seizure would probably not exceed $50. The stenographer's charges for the notes of testimony must alone reach $1,000 or more. The aggregate expense incurred, including the compensation of the numerous expert witnesses, we would hesitate to estimate. This supplies a commentary on one great defect of our system of administering legal justice. It is inordinately expensive.

"A product of the value of $50 is seized in a proceeding such as this. The shipper believes the seizure to be unjustified. Is he driven to the dilemma of submitting to the injustice or incurring thousands of dollars of expense in vindicating the integrity of his product? On the other hand, those charged with the enforcement of the law are likewise confronted with a dilemma. Should they permit what are believed to be unlawful products to be dealt in and thereby in practical effect, connive at the practice? We are merely describing a situation; not indulging in criticism for the situation is one not easily to be dealt with.

"The Pure Food and Drug Acts have a highly commendable purpose. This is too obvious to call for its statement. On the other hand, freedom of commerce is not only important but necessary. It should not lightly be interfered with by regulations. To hold fast to the good, and at the same time avoid the evil, demands the highest skill in administration. More than this, is the implication and effect of a finding. It may mean the destruction of an entire business.

"These comments have been provoked by a regrettable incident of this trial. As a legal proposition we have presented to us the duty of making a simple fact finding. Does the olive oil here in question contain an admixture of tea-seed oil?

"We may interpolate a word of commendation of counsel for their refreshingly frank attitude toward this question. It is conceded to be the sole question in the cause. The case, however, has developed into a scientific controversy. Is what is known to this record as the Fitelson color test, scientifically a convincing test of the presence of tea-seed oil in an olive oil mixture? Tea-seed oil, when subjected to chemical treatment, displays a characteristic color. The Fitelson test, as indeed several others, will disclose this. A chemical test of a product may thus demonstrate the presence of tea-seed oil in a mixture and be evidence from which the fact of its presence may be found. Those who deny the conclusiveness of the Fitelson test point out, however, that there are brands of olive oil which will display the same color which tea-seed oil, when present in limited quantity, displays or so nearly like it as not to be distinguished from it. In consequence, if the mixture contains olive oil, it could not be determined whether the color displayed was due to the presence of tea-seed oil or of the olive oil.

"It may be further interpolated that it seems to be conceded that if the mixture contains a large percentage of tea-seed oil—say 50 percent or more—the Fitelson test would disclose its presence. The real controversy is in a case, such as is here averred, in which the percentage of tea-seed oil is 25 percent, more or less.

"We have had, in addition to the testimony of a number of eminent chemists, the benefit of the testimony of the undoubtedly very competent chemist who discovered or developed the Fitelson test and after whom it was named. He has likewise favored us with demonstrations of his test conducted in open court. His skill and scientific knowledge as a chemist is unquestioned and the value of his contribution to the art is admitted. His test, however, has itself not yet been fully subjected to what one of the opposing witnesses frequently spoke of as 'the acid test of time and experiment.' The point of this is that there have been other tests which were, for a time favorably thought of but afterwards found to be unreliable. The Fitelson test was developed within the last

3 years. It was not made public until 1935 or 1936, when it was disclosed in so-called 'Press Releases.' The tone of these publications would provoke unfavorable comment. The test, was, however, submitted to the chemical profession. It aroused a widespread interest and has been, as it is being, subjected to trial by members of the profession. It has many believers in its efficiency and has zealous advocates. It would not, however, be as yet said to have been accepted by the profession generally, although it has been widely approved. The point made against it is the one before mentioned that there are many varieties of olives. They differ in origin, color, condition of maturity, and the oil is obtained by different processes. We have, because of this, had rather fine distinctions drawn between oils 'exuded,' 'extracted,' 'pressed,' and 'obtained' from olives. What results, it is said, is that some olive oils will display the color of tea-seed oil, or so near it, as to be indistinguishable from it. It is confidently asserted on the other hand that the Fitelson test will enable a chemist to pronounce judgment upon the presence of tea-seed oil.

"The limits of an opinion will not permit of a discussion of the merits of the Fitelson test even if we felt qualified to pass upon it. The regrettable feature, from the legal point of view, is that the case has been changed from one of the presence of tea-seed oil in the seized product, to that of a test of the Fitelson test.

"We leave this branch of the subject with this finding. We are not able from the application of the test alone to make a finding of the fact that tea-seed oil is present in the seized oil. A chemist and a court have the same question presented. Is tea-seed oil present in this oil? The chemist seeks an answer to this question through the method of applying an accepted chemical test. Indeed you could not satisfy his mind otherwise. The law accepts and adopts a scientific test as evidence but it has methods of its own to some of which the scientist would be indifferent. The law deals with litigants. A fact is to be found. The first inquiry of the law is upon whom rests the burden of proof? Here it undoubtedly rests upon the libelant. Convictions of truth vary in degree. These degrees are attempted to be expressed in the phrases "Preponderance of evidence'; 'beyond reasonable doubt'; 'clear, precise, and indubitable'; and that mixture of all which is given us in determining priority of invention in patent cases.

"Without discussing these gradations and what real help, if any, these phrases may be to us, it will be admitted that in cases of condemnation, confiscation, or forfeiture because of the existence of a fact, the evidence of its existence must be such that the mind of the trier of fact rests comfortably satisfied with an affirmative finding. The distinction we have in mind is that between a judgment of the comparative weight of evidence pro and con, which generally speaking is followed in civil cases, and a finding of on which side the truth may be. We will recur to this later as it is really the turning point in the decision of this case.

"Starting with the proposition that the libelant must offer evidence from which we can find with reasonable satisfaction of its truth, that the seized oil is intermixed with tea-seed oil, we follow it with the proposition that, if present, it was introduced by someone. The evidence thus might be the testimony of a witness who introduced it or saw it put in. This might be corroborated or contradicted by a chemical test of its presence or absence. If contradicted, the conflicting evidence must be considered and weighed. The first kind of evidence would ordinarily not be obtainable, so that resort must be had, as here, to the second. This might, again as here, take two forms. One the application of the test, so that the observer, if sufficiently skilled, could determine the fact. The other that of resort to opinion testimony of expert witnesses who had conducted or observed the test, to testify to their opinions of its significance. All the law does is to make this opinion testimony evidentiary. To the trier of fact, observation of the test might be convincing. If, however, the full significance of it was lost upon him he must determine the question from the expert testimony, and if conflicting, weigh it.

"This takes us back to the question of the degree of conviction required. We confess the conclusion to which we have come, to be 'a lame and impotent' one. It makes of this long trial a drawn battle. We endeavor to state it definitely so that the parties may be able to test the soundness of the ruling made.

"We are asked by the libelant to find as a fact that the seized oil is intermixed with at least 20 percent of tea-seed oil.

"This finding we decline to make because unconvinced of its truth so far that our mind would rest reasonably satisfied with the finding.

"We are asked by the intervenor to find as a fact that the seized oil was free from any admixture of tea-seed oil. This we decline to do for the like reason stated.

"The test as conducted before us failed to convince us of the presence of tea-seed oil in the seized oil. This is because we distrust our ability to judge of it.

"The expert opinion testimony to the presence of the tea-seed oil has likewise failed to convince us of the fact because of the opposing testimony of other expert witnesses whose competency and good faith is not questioned.

"It may be objected that this is to apply in a civil case the doctrine of reasonable doubt resorted to in criminal cases. This, in a sense, it is, but what is in doubt is not the fact in dispute but the proofs of it. The distinction attempted may be thus presented. A chemist prepares a mixture of olive oil and tea-seed oil in the proportions of 4 to 1. To this he applies the Fitelson test. He is not seeking to learn whether the mixture contains tea-seed oil because he already knows it does. There is no element of factual doubt in his mind. What is in his mind, after he has completed the test, is the judgment that the test does or does not prove the presence of tea-seed oil. The doubt which enters, if it may be said to be present, is in the mind of the trier of fact after he has listened to conflicting expert opinion testimony. Any fact in question may be said to be in doubt. Here it is the presence of tea-seed oil in the seized product. There may be doubt of its presence but there is no doubt of the other fact that the trier is unconvinced of its presence. Such a discussion partakes too much of the metaphysical to be profitably pursued.

"The point we are endeavoring to make is illustrated by an incident of this trial. Partly to relieve the tedium of the trial but also for the serious purpose of presenting the real nature of the controversy which had been provoked, the question was asked whether the claimant was an 'intervener' or an 'intervenor.' Disputes in orthography or pronunciation are usually settled by an appeal to lexicographers. The correct spelling or pronunciation is determined by authority. When, however, 'doctors differ who shall decide?' So here the question of fact of tea-seed oil or no tea-seed oil, has become wholly submerged in the other question of the merits of the Fitelson test.

"We dispose of it by declining to pass upon it.

"The comment should perhaps be added that in the parlance or terminology of chemists the term 'negative' applied to the result of a test such as one for the presence of tea-seed oil in an olive oil mixture, carries with it the idea of negation as that no tea-seed oil is present. The term is not used in the agnostic sense it conveys to lay minds.

"Being unconvinced of the truth of the averments of the libel, we state the following Findings of Fact and Conclusions of Law.

"Findings of Fact. 1. So far as it is a question of fact, we make the finding that the evidence has left us unconvinced that the seized oil had been adulterated with tea-seed oil.

"Conclusions of Law. 1. In the absence of a finding that the seized oil had been adulterated by the admixture of tea-seed oil, the oil of the seizure was neither adulterated nor misbranded.

"2. The libel should be dismissed."

On April 7, 1937, judgment was entered finding that the product was neither adulterated nor misbranded and it was ordered by the court that the libel be dismissed and the seized oil delivered to the claimant.

PAUL V. MCNUTT, *Administrator.*

31077. Adulteration and misbranding of olive oil. U. S. v. 143 Gallon Cans and 95 Quart Cans of Olive Oil. Default decree of condemnation and destruction. (F. & D. No. 37427. Sample No. 67699–B.)

Adulteration and misbranding of olive oil. U. S. v. 8 Gallon Cans, 21 Pint Cans, and 31 Half-Pint Cans of Alleged Olive Oil. Trial by jury. Verdict for Government. Judgment of condemnation. Product ordered sold or destroyed. Product destroyed. (F. & D. No. 37438. Sample No. 62644–B.)

Samples of this product were found to contain tea-seed oil.

On March 26, 1936, the United States attorneys for the Western District of Pennsylvania and the District of Maryland, acting upon reports by the Secretary of Agriculture, filed libels against 143 gallon cans and 95 quart cans of olive oil at Pittsburgh, Pa., and 8 gallon cans, 21 pint cans, and 31 half-pint cans of olive oil at Baltimore, Md., alleging the article had been shipped in interstate commerce on or about October 23 and November 3, 1935, from Brook-

lyn, N. Y., by the Agash Refining Corporation; and charging that it was adulterated and misbranded.

The article was alleged to be adulterated in that tea-seed oil had been mixed and packed with it so as to reduce or lower its quality or strength and had been substituted in whole or in part for olive oil, which it purported to be.

It was alleged to be misbranded in that the following statements and designs in the labeling were false and misleading when applied to a product which was not pure olive oil but which contained tea-seed oil: "Italian Product Pure Olive Oil Agash * * * Italy," "Prodotti Italiani Olio D' Oliva Puro Marca Agash Italia," "The Olive Oil contained in this can is pressed from fresh picked high grown fruit in Italy. It is * * * guaranteed to be absolutely pure," and "L'olio d'oliva contenuto in questa latta e stato spremuto da olive fresche raccolte in Italia. Especialmente raccomandato per tavola, medicinale ed e garantito assolutamente puro [designs of olive branches and Italian coat of arms with Italian flag]." It was alleged to be misbranded further in that it was offered for sale under the distinctive name of another article, i. e., olive oil.

On May 27, 1939, no claim or answer having been filed in the action instituted in the Western District of Pennsylvania, judgment of condemnation was entered and the product covered by the libel filed in that district was ordered destroyed.

On August 21, 1939, the Agash Refining Corporation, claimant, filed an answer and on October 4, 1939, an amended answer. In the amended answer the claimant denied that the product was adulterated or misbranded as charged in the libel and set forth as a separate and distinct defense that the facts in issue in the case *U. S.* v. *Thirteen 1-Gallon Cans of Olive Oil*, etc. (N. J. No. 31076) were identical with those in the instant case. On October 26, 1939, the Government moved to strike that portion of the amended answer which set up the aforesaid separate and distinct defense on the ground that the issues in the two actions were not identical. This motion was argued and was granted on October 26, 1939.

On November 7, 1939, the case came on for trial before a jury. The trial was concluded on November 13, 1939, and the case was submitted to the jury with the following instructions:

CHESNUT, *Judge*. "Gentlemen of the Jury, now is the proper time to instruct you on the law of the case, and to make some summation of the testimony, as a possible aid to you in reaching your verdict.

"I am sure you know, after some weeks of service, sitting in other cases, that the relative functions of the court and jury in this court are that the judge has to take the responsibility of telling the jury what is the law in the case, but the jury have the sole responsibility to decide the facts of the case for themselves, so that anything that the judge says or seems to imply with regard to the facts is in no way binding on the jury, but you are to decide on the facts yourselves. Anything that I may say to you in reviewing the testimony is purely intended as an aid to you. You can take it or refuse it, as you think wise.

"As to the law of the case, however, I have to take the responsibility for that. It is not a very grave responsibility in this case, because the law is very simple. If you find that this product does contain a substantial quantity of tea-seed oil—and when I say 'substantial,' I will refer to that a little later on—then, of course, you should find for the Government, and against the claimant. If, on the other hand, you find that the product does not contain tea-seed oil, or if you find that your mind is equally poised about that question of fact, as to whether it does or does not, then you should find a verdict for the claimant, because the burden of proof, as we say, is on the Government to satisfy you in this case by the weightier evidence, by the preponderance of evidence—and I will define that a little later—that the cans do contain tea-seed oil.

"Now, while the law is extremely simple, it may be interesting to you to know how it comes to be the law, and why it is we try a case of this kind in this Federal court, and why it is that this particular individual defendant has had his goods seized, and is put, of course, to the trial of the purity of his product and the genuineness of his labels, and the truthfulness of those labels.

"Well, the reason the case is in this court is because it involves interstate commerce. And if you take your minds a little way back to the history of the formation of this Government, you will realize that before our present Constitution, 1787, and after our Revolutionary War, 1776 to 1783, the form of government in the country was what is called the Articles of Confederation.

But that would be a very weak Federal Government. And it was a compact, really, between the States, without any direct power of the central government over the individuals who were citizens of the different States.

"Now, when the Constitution was formed in 1787, which had as one of its purposes the formation of a stronger government than then existed, at the same time there was a great deal of opposition on the part of the States to giving up their particular sovereign powers to the Federal Government. And the result was they compromised, in which certain powers were given to the Federal Government, and certain powers were reserved to the States.

"One of the powers that was given to the Federal Government was the power to regulate interstate commerce: that is to say, trade, and the traffic, and travel from one State to another. You do not have the necessity, therefore, in the United States of America, of a customs regulation, such as now is being advocated as a very desirable thing for some of the countries of Europe. We have no trade barriers between State and State. And one of the most important reasons for the Constitution that we are now living under was the freedom of commerce between the States. And the power to regulate that was given to Congress, so that it should be kept free. And in keeping it free it is reasonable also that it should be kept pure and honest, and that merchants' goods as represented on the labels should be true in fact; and if not, measures should be taken to see that they are kept true. And not only, therefore, has Congress the power to regulate commerce between the States, but it has the power to do it in a way which operates directly from the Federal Government upon the individual.

"Now, that is the background of the Congressional power in this case. That is why the case is in this court, because it raises a Federal question, as distinct from a question of State law.

"Now, the case is brought under what is known as the Pure Food & Drug Act, which was passed by Congress away back in 1906. It was the result of very long public discussion and agitation. There was a great deal of opposition to it. It was felt by many people before it was passed that it could be made to act oppressively upon the reasonably honest, or the wholly honest merchant whose goods might be seized in any part of the country, and he would be put to the burden, of course, of defending the suit, no matter how many seizures were made, and no matter where they were made.

"Nevertheless, Congress passed the law, and one of the features of the law was that goods should not be adulterated, that they should not be cheapened by the putting in of cheaper substitutes for the genuine article, and with respect to the goods inside the container that the labels should fairly apprize people what they are.

"One of the reasons for the passage of the law, of course, had to do very largely with the matter of proprietary medicines, sometimes called patent medicines, which very often, it was said, contained ingredients which were not disclosed by the label, and which were positively injurious. And with regard to foods, of course, it was even more important, because while people may get harmful results from taking drugs which are undisclosed or concealed as the real contents, yet, the number of people who take drugs, compared with the number of people who buy foods, is comparatively small. So it was extremely important to keep food absolutely unadulterated and pure, and that the truth should be told with regard to food products.

"Well, despite the opposition to the passage of the law, on the ground that it was feared it would be too drastic, and might be used oppressively, Congress did, in its judgment and wisdom, in 1906, pass the law. And I do not think it needs any commendation after 30 years or more in practice to realize that it is an extremely beneficial law.

"Of course, any law can be used oppressively; but as long as public officers are responsible to the public for the conduct of their activities, it is not likely that there would be any actual oppression to any considerable extent.

"We, however, have nothing really to do with that in this particular case. And I mention it only to give you the background of the legislation.

"Where we are now, and what the simple law is in this case is, as I say, that if this article is adulterated, or if it is misbranded, then it clearly ought to be condemned by you. And without going into the details of the definition of misbranding, or adulteration, the various phases that they may have, it is simply true in this case that if this article contains tea-seed oil instead of

being pure olive oil, then the cans are misbranded, and also the article is adulterated, because it has something in it which is not the pure olive oil.

"So the law is very clear in the case, and the issue of fact is very clear and comparatively simple: that is to say, the ultimate finding of the facts may be difficult to you—I express no opinion about that—but the statement of the question that is submitted to you is a very simple one: Does or does not this olive oil contain tea-seed oil?

"Now, when I said a moment ago a substantial quantity, I think it is technically true that if it has 1 percent of tea-seed oil, it would be adulterated, it would be misbranded. But, practically, in this case, under the evidence, no one is willing to say that a quantity of tea-seed oil less than 8 percent could be detected by anybody, by any kind of a process, by the most scientific tests that could be applied, so that, therefore, as a practical matter in this case, nobody can say that these cans contain tea-seed oil unless there is at least 8 percent of tea-seed oil in them, simply because we have no evidence on which to base any such conclusion.

"Now, what is tea-seed oil? Well, of course, you have heard in the evidence that it is related to the ordinary commercial product so familiar to all of us, tea. But the tea seeds are not exactly the same thing as the tea which you use, and which is used to make a cup of tea. That comes from the leaves and the plant, while the tea seeds are something, I presume, although it was not made perfectly clear in the evidence, preceding the growing of the tea leaves, presumably, I should say tea seeds, the seeds which when planted result in the tea leaves and the ordinary commercial product of tea. But that is not very important of itself, except in an explanatory way, to know what we are dealing with.

"Now, again, it is not legally important in this case whether the tea-seed oil, if there is any in this product, is injurious to health or not. That might be important under one aspect of the law, but it is not important in this case, because here we are dealing with an adulteration which is simply a substance something other than the brand indicates; and there is no charge here by the Government that the substituted article, if it is there, is injurious to health. If it were, of course, the case would be even more important than it otherwise is. But in judging of the fact, I think you can ask yourselves, What is this tea-seed oil?

"Now, when you come to the question of how can you tell from the evidence whether this olive oil has tea-seed oil in it to a substantial amount, over 8 percent—the case is about that—in 1935, when the oil of which these cans were a part was imported from Italy, according to the testimony, there was no known test by which the presence of tea-seed oil in olive oil could be determined. It could not be determined, according to the testimony, by sight, smell, taste, or any of the five senses. Furthermore, according to the evidence, there was no reliable chemical test. Now, therefore, if the importer in this case had suspected in 1935 that these cans contained tea-seed oil, there was no way, so far as the evidence in this case shows, that he could have tested it or determined it.

"Now, again, however, that is not a controlling point in the case, because it is said by the Government that after this oil was imported, and about the time that it was shipped down from New York to Baltimore, and was seized by the Government, that a Government chemist had developed a test which was valuable. And I don't know that the word 'infallible' has been used in regard to it; but it was reliable.

"Now, the question really that you have to decide is whether, from all the evidence you have heard, you are convinced that that test, the Fitelson test, is a reliable test, because there is no other evidence in this case on which you could safely base a verdict of a finding of tea-seed oil in this product unless you are satisfied by your reasoning, and from what you have heard from the evidence, that this Fitelson test is a reliable test.

"The evidence of that, of course, is that it was first developed in 1936, and is the first test which the Government has been able to rely upon. And you have heard the evidence of the extent to which the test has now been accepted by scientific people.

"On the other hand, it is contended that a period of 3 years is not enough to make this test one that can safely generally and always be relied upon. The alleged infirmity in the test has been discussed to you, as contended for by counsel for the claimant here, and by General Woodcock in his concluding speech; and I need not refer to that again specifically.

"Now, it has been argued on behalf of the Government—and I might parenthetically say that both arguments, both for the claimant and for the Government, have been interesting and forceful, and both of them have been designed to appeal to your reason, and it is your reasonable judgment that is invoked here, and you have to reason in this case about the sufficiency of a chemical test, a thing that the average man, of course, is not often called upon to analyze—the Government argues to you that you have the opinion here of four or five very distinguished chemists, and that ought to be enough.

"Well, if you had merely the opinions themselves, that would be one thing. But the evidence has gone further, and the chemists have given you the reasons on which they base their opinions.

"Now, if you had a case of a question of sanity or insanity, and you had a medical doctor, or alienist, as we call the medical experts on insanity, come into court and say that the man is sane or insane, they have to give their reasons for their conclusions, and the jury has to determine whether those reasons appeal to their reason.

"So that I would suggest to you in this case that it is not possible as a stopping point to merely say that four or five distinguished chemists have given you an opinion that this olive oil contains tea-seed oil. They have to give you a reason for that opinion. And you should ask yourselves whether you are satisfied by that reason.

"Now, you can further ask yourselves, What is the reason they assign for the view that tea-seed oil is here? You find it is the Fitelson test. As I followed the testimony, not one of the chemists gave any reason for his opinion except that he had applied the Fitelson test, and that that test showed him, by the test, that there was tea-seed oil here.

"So, therefore, I point out to you that that is how you reason about this matter.

"The ultimate basis for your conclusion must be for or against the sufficiency, in your best judgment, and the reliability of the Fitelson test.

"You have, of course, some little corroborative evidence from Dr. Brice, based on a spectroscopic test. But, as was made plain from his testimony, that was not an affirmative positive test to determine the presence of tea-seed oil, but that it is indicative to him of the presence of something other than pure olive oil.

"But it is not sufficient for the Government in this case, under the pleadings, to show that there is or may be something other than pure olive oil here, because they have specified that the adulterant, the alleged adulterant, is tea-seed oil. So that if we had only Dr. Brice's testimony in the case, interesting as it is, we would not be able to say that that was in itself sufficient to justify a finding that there was tea-seed oil in this substance.

"Now, what is the Fitelson test? I won't go into that in any great elaboration, because you have heard so much about it. It has been very well argued by counsel on both sides.

"In the final analysis, of course, it is what we call a subjective test, rather than an objective test. That is to say, it depends upon the judgment of the man who is testifying about it, as to his appreciation of the range of color that he observes at the time—an evanescent color. He does not bring that color in to show you, except by virtue of tubes of water with certain coloring in them, for the purpose of illustrating what he said he observed. In other words, this is an appreciation through the eye of the distinction between colors, which is relayed to you as his recollection. And that is the thing that you have to appraise.

"Now, nobody in this case, as far as I know, attacks the credibility of the witnesses for the Government who say they got these different color reactions, and judge that the article had tea-seed oil, by virtue of their discrimination and distinction between different colors.

"The way they give it to you is that they say that chemical tests show undoubtedly that if you apply certain chemical substances to seven drops of known pure olive oil, you get, for a 5-minute period during the experiment a color to the solution, which is a very faint pink; and they say that if you do the same thing with known pure tea-seed oil, you get a color reaction which is a definitely deeper pink. Then they say that if you take 80 percent of pure olive oil and add to it 20 percent, or make a solution of 80 percent pure olive oil and 20 percent pure tea-seed oil, you get a color of pink by the experiment which is appreciable to the eye, the normal eye, greater in depth of the color

pink than pure olive oil will give, but, of course, nothing like so great as the 100 percent tea-seed oil. And they say that if you make it a 25, or 30, or 40 percent mixture of tea-seed oil and olive oil, you get an even more definite coloration in the gradation of pink.

"Now, with that standard of comparison, they say they performed the experiment with regard to the olive oil, or whatever it is in these cans, and the colors that they got from the experiment they contrasted with their standards of 10, 20, 30, or 40 percent mixtures of tea-seed oil in known olive oil.

"Now, it is their judgment, based on their appreciation of the color pointed out to you by their testimony as witnesses, that you have to rely upon in this case as the evidence on which the Government asks you to say that these cans of olive oil contain a substantial amount of tea-seed oil. And you have to bear in mind, of course, in that connection, that up to 1936 there was no known reliable test for detecting this tea-seed oil.

"Now, you have also, however, some little corroboration and some differentiation that you have to think about. The samples were taken in 1936 from this seizure, and again in 1939, 3 years apart. Well, it might very well be thought by the layman, offhand, that olive oil that has been kept subject to variations in temperature, heat and cold, wet and dry seasons, over a period of 3 years, that there might be some variation in the chemical composition of the contents of the cans. However, the testimony here is that that is not the case where the oil is kept hermetically sealed. And, also, you have the testimony that the analyses by these experiments, according to the witnesses, show, according to them, about the same percentage of tea-seed oil from the 1936 samples as from the 1939 samples.

"Now, I shan't go greatly further into the analysis of the evidence, except to emphasize again to you that the real question here is whether you have been satisfied by all the testimony that you have heard that this Fitelson test is a reliable test, as it is applied to this subject matter.

"The Government has the burden of proof to satisfy you of that fact. And when I say it has the burden of proof, that has not any very technical meaning, but it simply means that unless the Government's witnesses affirmatively show the fact, then the case falls.

"Now, the burden of proof also is dependent upon the preponderance of evidence in a case of this character, which is a civil case and not a criminal case. All the Government has to do is to satisfy you by a preponderance of evidence, by the more weighty evidence.

"And in this case you have very little evidence from the side of the claimant. You have a great deal of argument. And I am sure you have listened to that And I do not mean to suggest at all that the evidence is slight and the argument is great, and, therefore, you should disregard either the evidence or the argument. Sometimes one witness may be just as potent as a dozen. And the burden of proof and the preponderance of the evidence does not depend at all upon the mere quantity and number of witnesses, because you have to take into consideration the quality of their testimony.

"In this case it is perfectly obvious, if you are satisfied, as General Woodcock suggests that you should be, with the opinion of the four or five distinguished chemists, then obviously the weight of the evidence here is with the Government. If, however, in applying your reason you go behind the mere expressed opinion of the experts, and look at the basis for that opinion, and apply that to your judgment as to the sufficiency of the Fitelson test, why, then, after all, you have only practically the one witness for the Government, which is the Fitelson test.

"Now, by laying stress on the ultimate analysis of the test, I do not want to suggest for a moment that there is weakness in the Fitelson test. You heard Dr. Fitelson on the stand. And you are capable of sizing up for yourselves whether he satisfied you that he was a competent man and had devised a test which was reliable in this case. And you can form your own judgment about that, from your familiarity with what he said, and how he expressed himself. You can consider also, undoubtedly, the fact that these other eminent scientists have been willing to express their professional opinion that the Fitelson test is reliable.

"It is, however, true that it has been effective for only 3 years, and that it apparently originated contemporaneously, or about the time of the seizure of these tin cans of olive oil. And you have to look at all the evidence in the

case to satisfy yourself, from the standpoint of the Government's evidence, whether you are satisfied that the Fitelson test is reliable.

"Now, you must also consider in this case, in that same connection, the defendant's testimony.

"There are two possibilities there:

"One is that this product has been deliberately and intentionally adulterated and cheapened, for the purpose of making a greater profit.

"The other is the possibility that, consistent with the entire good faith of the claimant in this case, they sold as pure olive oil what they bought as pure olive oil, and if there is tea-seed oil in the product it was put there by the exporter from Italy.

"Now, we have no positive evidence of that one way or the other. But it does not follow because you are satisfied that there is tea-seed oil in these cans that the claimants are necessarily dishonest men, that they have deliberately and intentionally put it there. They tell you very clearly that they did not put it there, that they bought it for pure olive oil, and they sold it as pure olive oil, just as they bought it, without any admixture whatever.

"They describe the nature of their refining plant in New York, and show you how from the original drums in which the olive oil is imported it is taken up into a glass-lined tank, I think, and is there distributed, and after running through a purifier to the bottling works, or wherever it is distributed into the cans, without any adulteration at all, and without ever pouring tea-seed oil into the tank in which the olive oil is contained.

"On the other hand, the testimony does show that these people have been selling another brand, an admixture of tea-seed oil and olive oil. They say they sell it under the brand of San Gennaro, and they do not call it olive oil, and that it consists of a mixture of 15 percent of olive oil and 85 percent tea-seed oil, so that it was entirely physically possible for them to have mixed 40 percent, or 20 percent, or less of tea-seed oil in the olive oil, just as well as it was possible for them to mix 85 percent of tea-seed oil and 15 percent of olive oil, and sell it as San Gennaro oil.

"So that I think you will probably conclude there is nothing in the way of physical impossibility of their having made this mixture, if they deliberately intended to do so. It is not contended that it could have been done accidentally, or was done accidentally.

"You have, therefore, the two alternatives, that on this point of the case they may have been deceived themselves in buying it from abroad, if you find that tea-seed oil is in the product, or they may have deliberately done it for the purpose of cheapening the product, cheapening the cost to themselves.

"Now, on the latter point, as to whether there is any financial motive here for deliberate adulteration, you have the figures which have been given to you, and which have been commented upon by counsel on both sides.

"This Agash Company is apparently, or was back in 1935, doing a substantial business. They had a gross business of $750,000 a year. The utmost saving, according to the calculation of the counsel on both sides, that they would have made by a substitute of 25 percent of tea-seed oil into the olive oil would be only $5,000 a year, which, as compared to $750,000 gross business, is certainly not much. It is about three-fourths of 1 percent. General Woodcock suggests to you that you ought to make a calculation of $5,000 on $75,000. Well, that is a matter that you can consider from both aspects, whichever you think is the more reasonable.

"But I point out to you that the question of whether there was a motive to do it is not the controlling thing in this case. Of course, so far as deliberate adulteration is concerned, obviously, in a trading business, that would be done, ordinarily, at least, for only one motive, and that is to make a greater profit. And unquestionably the passage of the Pure Food and Drug Act had as one of its objectives the stopping of that sort of adulteration for the purpose of cheapening a product and increasing the profits. In this particular case, whether that motive could reasonably be found to have existed from the figures in the case, is a matter for you to determine. I say, however, that it is not necessary for the Government to show that there was a deliberate adulteration. It is sufficient if they have proven to your satisfaction, by a preponderance of the evidence, that the article does contain this tea-seed oil.

"And it is not important on that inquiry whether the tea-seed oil is injurious to health or not. It is important that housewives when buying a can of pure

olive oil should get what they are buying. And if they are not getting what they are buying, it does not matter whether it is by the misfortune, or the innocent mistake, or by the wilful and intentional and deliberate action of the person who sells it to them.

"The man who puts out an article and calls it pure olive oil, takes the risk of the correctness of the statements that he has made. And if he has made a mistake, either innocently or otherwise, he subjects his product to seizure and condemnation by the Government.

"The Pure Food and Drug Law, gentlemen, the Act of 1906, which we are dealing with here, has been recently amended and somewhat extended by the Act of 1938, of which you may have seen a discussion in the papers from time to time. But we are dealing with the former act, and not the latter act, because this seizure was made back in 1936, before the 1938 act was passed.

"Now, I think I have about covered the subject, so far as I recall.

"This olive oil business, as we have said, is 10 percent or less of the total business of the Agash Company.

"Is there anything else that counsel would like me to comment on, or any exceptions? Do you want to take any exceptions, or do you want the jury to retire?"

Mr. SOBELOFF. "We are content with the court's charge, your Honor."

Mr. WOODCOCK. "I have no suggestions, your Honor."

The COURT. "Very well."

"Gentlemen of the Jury, the form of your verdict, when you have arrived at it, will be this: If you find for the Government, you will simply say you find for the Government. If, on the other hand, you find for the claimant, you will say that you find for the claimant. Putting it in another way, if you find that these cans contain tea-seed oil, then you should find for the Government. If you find that they do not contain tea-seed oil, or if you are not satisfied by a preponderance of the evidence that they contain tea-seed oil, then you should find for the claimant.

"The preponderance of the evidence, I think I have explained to you. It does not mean that the jury should be equally divided on the question. That is not preponderance at all. I know of a case once in which the expression 'the preponderance of evidence' was expressed in this way: if the minds of the jury are in equipoise about the fact, then they should find for the defendant. And that was understood by the jury to mean that if they stood six to six upon the issue, they should find for the defendant. Of course, that is all wrong. It is an individual problem of the judgment of each one of you. And when we speak of the preponderance of evidence we mean whether each one of you has a conviction, after having heard all the evidence, that the weight of the evidence supports one view or the other view. But the burden in this case is on the Government to show that it has the weight of evidence on its side.

On November 13, 1939, the jury returned a verdict for the Government and on November 23, 1939, judgment of condemnation was entered and it was ordered that the product be sold by the United States marshal as a mixture of olive oil and tea-seed oil and that the purchaser be required to remove the oil from its present containers, and to label such product, if for resale, as a mixture of olive oil and tea-seed oil. The decree provided further that upon failure to effect such sale the product be destroyed. No sale was made and the product was destroyed.

PAUL V. MCNUTT, *Administrator.*

31078. Adulteration of canned mackerel. U. S. v. 521 Cases of Canned Mackerel (and 4 other seizure actions involving canned mackerel). Decree of condemnation. Portion of product released under bond. Remainder ordered destroyed. (F. & D. No. 44048. Sample No. 33987–D.)

This product was found to be in part decomposed.

Between October 1 and October 7, 1938, the United States attorney for the Eastern District of Virginia, acting upon reports by the Secretary of Agriculture, filed libels against 636 cases of canned mackerel in various lots at Norfolk, Emporia, Suffolk, and Miles Store, Va., alleging that the article had been shipped in interstate commerce on or about August 31, 1938, by the Southern California Fish Corporation from Terminal Island, Calif.; and charging that it was adulterated in violation of the Food and Drugs Act. The article was labeled in part: "Sunset Brand California Mackerel."

It was alleged to be adulterated in that it consisted in whole or in part of a decomposed animal substance.

On September 9, 1940, the Southern California Fish Corporation, having appeared as claimant, and the cases having been consolidated, judgment of condemnation was entered and it was ordered that a portion of the product identified by a certain code be destroyed and that the remainder of the product, consisting of two codes, be released to the claimant under bond conditioned that it should not be sold or disposed of contrary to law.

PAUL V. MCNUTT, *Administrator.*

31079. Adulteration of cream. U. S. v. George J. Sharpensteen. Plea of guilty. Fine, $400. (F. & D. No. 42798. Sample Nos. 15541–D, 15545–D.)

The product on which this action was based contained added mineral oil.

On May 20, 1940, the United States attorney for the Western District of Arkansas, acting upon a report by the Secretary of Agriculture, filed an information against George J. Sharpensteen, Harrison, Ark., alleging shipment by said defendant in violation of the Food and Drugs Act on or about July 18 and 29, 1938, from the State of Arkansas into the State of Missouri, of quantities of cream that was adulterated.

Adulteration was alleged in that mineral oil had been mixed and packed with the article so as to reduce or lower or injuriously affect its quality or strength and had been substituted in part for cream, which the article purported to be.

On September 23, 1940, the defendant entered a plea of guilty and the court imposed a fine of $400.

PAUL V. MCNUTT, *Administrator.*

31080. Misbranding of canned cherries. U. S. v. 49 Cases of Canned Cherries. Default decree of condemnation and destruction. (F. & D. No. 45606. Sample No. 6375–E.)

This product was substandard because of the presence of excessive pits and because it was packed in water, and it was not labeled to indicate that it was substandard.

On or about May 21, 1940, the United States attorney for the District of Montana, acting upon a report by the Secretary of Agriculture, filed a libel against 49 cases of canned cherries at Havre, Mont., alleging that the article had been shipped in interstate commerce by the Woods Cross Canning Co., for the Varney Canning Co., Inc., on or about October 10, 1939, from Clearfield, Utah; and charging that it was misbranded. The article was labeled in part: "Leota Brand Pitted Red Sour Cherries * * * Varney Canning, Inc., Roy Utah."

It was alleged to be misbranded in that it was canned food and fell below the standard of quality and condition promulgated by the Secretary of Agriculture since there was present more than 1 cherry pit for each 20 ounces of net contents and it was packed in water, and the packages or label did not bear a plain and conspicuous statement prescribed by the Secretary of Agriculture indicating that it fell below such standard.

On July 25, 1940, no claimant having appeared, judgment of condemnation was entered and the product was ordered destroyed.

PAUL V. MCNUTT, *Administrator.*

31081. Misbranding of canned tomatoes. U. S. v. 104 Cases of Tomatoes. Default decree of condemnation and destruction. (F. & D. No. 45615. Sample Nos. 13190–E, 26236–E.)

This product was substandard because the fruit units did not consist of whole or large pieces, and it was not labeled to indicate that it was substandard.

On July 12, 1940, the United States attorney for the District of Idaho, acting upon a report by the Administrator, Federal Security Agency, filed a libel against 104 cases of canned tomatoes at Boise, Idaho, alleging that the article had been shipped in interstate commerce on or about December 18, 1939, by the Varney Canning Co., Inc., from Roy, Utah; and charging that it was misbranded. The article was labeled in part: "Dot Brand Tomatoes with Puree From Trimmings. Packed by Varney Canning, Inc., Roy, Utah."

It was alleged to be misbranded in that it was canned food and fell below the standard of quality and condition promulgated by the Secretary of Agriculture in that the fruit units did not consist of whole or large pieces and its

package or label did not bear a plain and conspicuous statement prescribed by the Secretary of Agriculture, indicating that it fell below such standard.

On August 13, 1940, no claimant having appeared, judgment of condemnation was entered and the product was ordered destroyed.

PAUL V. MCNUTT, *Administrator.*

31082. Adulteration of Brazil nuts. U. S. v. Wm. A. Camp Co., Inc. Plea of guilty. Fine, $100. (F. & D. No. 42529. Sample Nos. 62590-C, 62591-C, 62592-C, 62594-C.)

Samples of this product were found to be in part moldy, rancid, or decomposed.

On August 26, 1938, the United States attorney for the District of New Jersey, acting upon a report by the Secretary of Agriculture, filed an information against the Wm. A. Camp Co., Inc., a corporation having its principal place of business at New York, N. Y., alleging shipment by the defendant in violation of the Food and Drugs Act, within the period from on or about October 2 to November 1, 1937, from Hoboken, N. J., into the State of Pennsylvania, of a quantity of Brazil nuts that were adulterated. The article was labeled in part: "Tropical Brand New Crop."

It was alleged to be adulterated in that it consisted in whole or in part of a filthy or decomposed vegetable substance.

On June 17, 1940, a plea of guilty was entered on behalf of the defendant and the court imposed a fine of $100.

PAUL V. MCNUTT, *Administrator.*

31083. Misbranding of canned cherries. U. S. v. 15 Cases of Canned Cherries. Default decree of condemnation. Product delivered to a charitable institution. (F. & D. No. 45600. Sample No. 70496-D.)

This product was substandard since it contained excesive pits, and was not labeled to indicate that it was substandard.

On March 11, 1940, the United States attorney for the District of New Mexico, acting upon a report by the Secretary of Agriculture, filed in the district court a libel praying seizure and condemnation of 15 cases of canned cherries at Clovis, N. Mex., alleging that the article had been shipped in interstate commerce on or about November 15, 1939, by the Furr Food Stores, that the shippers had transported the article in their own truck from Amarillo, Tex., to themselves at Clovis, N. Mex.; and that it was misbranded in violation of the Food and Drugs Act. The article was labeled in part: "Admiration Red Sour Pitted Cherries * * * Packed by Colorado Packing Plant, Canon City, Colorado."

It was alleged to be misbranded in that it was canned food and fell below the standard of quality and condition promulgated by the Secretary of Agriculture since there was present more than 1 cherry pit per 20 ounces of net contents, and its package or label did not bear a plain and conspicuous statement prescribed by regulation of this Department indicating that it fell below such standard.

On April 23, 1940, no claimant having appeared, judgment of condemnation was entered and it was ordered that the product be delivered to a charitable institution for the use of that institution.

PAUL V. MCNUTT, *Administrator.*

31084. Misbranding of canned tomatoes. U. S. v. 448 Cases and 947 Cases of Tomatoes. Product found substandard and ordered released under bond for relabeling. (F. & D. Nos. 45570, 45571. Sample Nos. 82045-D, 82047-D.)

This product was substandard, one lot because it was not normally colored and the other because the fruit did not consist of whole or large pieces; and it was not labeled to indicate its substandard character.

On October 21, 1939, the United States attorney for the Western District of Oklahoma, acting upon a report by the Secretary of Agriculture, filed a libel against 1,395 cases of tomatoes at Oklahoma City, Okla., alleging that the article had been shipped in interstate commerce within the period from on or about September 10 to on or about September 22, 1939, by Hargis Canners, Inc., from Fayetteville and Huntsville, Ark.; and charging that it was misbranded. One lot was labeled in part: "Home Delight Hand Packed Tomatoes * * * Packed by Hargis Canners Inc." The other lot was labeled in part: "Ozark Pride Hand Packed Tomatoes * * * Packed by Ozark Canning Co."

The article was alleged to be misbranded in that it was canned food and fell below the standard of quality and condition promulgated by the Secretary of Agriculture since the lot labeled "Home Delight Brand" was not normally colored and the lot labeled "Ozark Brand" did not consist of whole or large pieces, and the packages or labels did not bear a plain and conspicuous statement as prescribed by the Secretary of Agriculture indicating that it fell below the prescribed standard.

On October 27, 1939, Hargis Canners, Inc., claimant, having admitted the allegations of the libel, and the court having found that the product was substandard, judgment was entered ordering that it be released under bond for relabeling.

PAUL V. MCNUTT, *Administrator.*

31085. Misbranding of canned cherries. U. S. v. Washington Packers, Inc. Plea of nolo contendere. Judgment of guilty. Fine, $25 and costs. (F. & D. No. 42797. Sample No. 82617.)

This product was substandard because of the presence of excessive pits, and it was not labeled to indicate that it was substandard.

On May 18, 1940, the United States attorney for the Western District of Washington, acting upon a report by the Secretary of Agriculture, filed an information against the Washington Packers, Inc., Sumner, Wash., alleging shipment by said defendant in violation of the Food and Drugs Act as amended, on or about August 7, 1939, from the State of Washington into the State of Florida, of a quantity of canned cherries that were misbranded. The article was labeled in part: "Inavale Brand Water Pack Red Sour Pitted Cherries."

The article was alleged to be misbranded in that it was canned food and fell below the standard of quality and condition promulgated by the Secretary of Agriculture since it contained more than 1 pit per each 20 ounces of net contents and its package or label did not bear a plain and conspicuous statement prescribed by the Secretary of Agriculture indicating that it fell below such standard.

On August 30, 1940, the defendant entered a plea of nolo contendere, was adjudged guilty, and was fined $25 and costs.

PAUL V. MCNUTT, *Administrator.*

31086. Misbranding of canned peas. U. S. v. 100 Cases of Canned Peas (and 4 other libels against canned peas). Decrees of condemnation providing for release of product under bond for the purpose of relabeling. (F. & D. Nos. 45554, 45556, 45557, 45560, 45573. Sample Nos. 69278–D, 69279–D, 69280–D, 69090–D, 74035–D.)

This product was substandard because the peas were not immature, and the label did not indicate that it was substandard.

Within the period from on or about August 23 to on or about October 31, 1939, the United States attorney for the District of Massachusetts, acting upon reports by the Secretary of Agriculture, filed libels against 100 cases of canned peas at Revere, Mass., 177 cases at Worcester, Mass., 175 cases at Boston, Mass., and 148 cases at New Bedford, Mass., alleging that the article had been shipped in interstate commerce in violation of the Food and Drug Act as amended, within the period from on or about July 6 to on or about August 24, 1939, by Bruder & Zweil, Inc., from Providence, R. I.; and charging that it was misbranded. The article was labeled in part variously: "Admiration Selected Early June Peas * * * Edwin Smithson Company Incorporated, Distributors, New York"; J. M. Berry Brand Early June Peas * * * The H. J. McGrath Co., Baltimore, Md., U. S. A. Distributors"; "Ma-Son Early June Peas * * * Robert W. Mairs & Co., Distributors, Baltimore, Md.

The article was alleged to be misbranded in that it was canned food and fell below the standard of quality and condition promulgated by the Secretary of Agriculture since the peas were not immature, and its package or label did not bear a plain and conspicuous statement as prescribed by the Secretary of Agriculture indicating that it fell below such standard.

On October 23, 1939, and January 12, 1940, the libels filed against the lots seized at Boston, Revere, and Worcester, Mass., having been consolidated and Bruder & Zweil, Inc., having appeared as claimant in the consolidated action and also in the action involving the goods seized at New Bedford, Mass., and claimant having admitted the allegations in all libels, judgments of condemnation were entered and it was ordered that the product be released under bond conditioned that it be relabeled to show its true nature.

PAUL V. MCNUTT, *Administrator.*

31087. Adulteration of maple sirup. U. S. v. 1 Drum of Maple Sirup. Decree of condemnation and destruction. (F. & D. No. 45480. Sample No. 68962–D.)

Analysis showed that this product contained lead.

On June 9, 1939, the United States attorney for the District of Vermont, acting upon a report by the Secretary of Agriculture, filed a libel against one drum of maple sirup at Rutland, Vt., alleging that the article had been shipped in interstate commerce on or about April 24, 1939, by Fred H. Rater from Sherman, N. Y., and charging that it was adulterated in that it contained an added poisonous or deleterious ingredient, namely, lead, which might have rendered it injurious to health.

On January 27, 1940, no claimant having appeared, judgment of condemnation was entered and the article was ordered destroyed.

PAUL V. MCNUTT, *Administrator.*

31088. Adulteration of butter. U. S. v. Kearney Co. Co-Op Creamery. Plea of guilty. Fine, $25 and costs. (F. & D. No. 42784. Sample No. 67370–D.)

This product was deficient in butterfat.

On December 6, 1939, the United States attorney for the District of Nebraska, acting upon a report by the Secretary of Agriculture, filed in the district court an information against the Kearney Co. Co-Op Creamery, a corporation, Minden, Nebr., alleging shipment by said defendant in violation of the Food and Drugs Act, on or about June 20, 1939, from the State of Nebraska into the State of New York, of a quantity of butter which was adulterated.

The article was alleged to be adulterated in that a product which contained less than 80 percent by weight of milk fat had been substituted for butter, a product which should contain not less than 80 percent by weight of milk fat.

On March 11, 1940, a plea of guilty was entered on behalf of the defendant and the court imposed a fine of $25 and costs.

PAUL V. MCNUTT, *Administrator.*

31089. Adulteration of tomato catsup. U. S. v. Frazier Packing Corporation. Plea of guilty. Fine, $250. (F. & D. No. 42802. Sample Nos. 66739–D, 84277–D.)

This product contained excessive mold.

On August 15, 1940, the United States attorney for the Southern District of Indiana, acting upon a report by the Federal Security Administrator, filed an information against the Frazier Packing Corporation, Elwood, Ind., alleging shipment by said company in violation of the Food and Drugs Act on or about January 21 and June 14, 1939, from the State of Indiana into the States of Missouri and Kansas, of two consignments of tomato catsup that was adulterated. One shipment was labeled in part: "Frazier's Tomato Catsup * * * Prepared by Frazier Packing Corp." The other shipment was labeled in part: "Sunshine Brand Tomato Catsup * * * Packed for Springfield Grocer Co., Springfield, Mo."

The article was alleged to be adulterated in that it consisted in whole and in part of a decomposed substance. The information also charged that the defendant had made seven other shipments of tomato catsup which was adulterated in violation of the Federal Food, Drug, and Cosmetic Act, as reported in notices of judgment published under that act.

On September 26, 1940, a plea of guilty having been entered on behalf of the defendant, the court imposed a fine of $250 for violation of both acts.

PAUL V. MCNUTT, *Administrator.*

31090. Misbranding of canned cherries. U. S. v. 38 Cases of Canned Cherries and 1 other libel against a similar product. Decrees of condemnation. Product ordered distributed to a charitable institution. (F. & D. Nos. 45590, 45598. Sample Nos. 70422–D, 70495–D.)

This product was substandard because of the presence of excessive pits, and it was not labeled to indicate that it was substandard.

On or about January 29 and March 1, 1940, the United States attorney for the Northern District of Texas, acting upon reports by the Secretary of Agriculture, filed libels against 38 cases of canned cherries at Amarillo, Tex., and 42 cases of canned cherries at Pampa, Tex., alleging that the article had been shipped in interstate commerce on or about July 26, 1939, by the Colorado Packing Plant from Canon City, Colo.; and charging that it was misbranded

in violation of the Food and Drugs Act. The article was labeled in part: "Admiration Red Sour Pitted Cherries" and "Faust Brand * * * Pitted Sour Water Pack Red Cherries."

The article was alleged to be misbranded in that it was canned food and fell below the standard of quality and condition promulgated by the Secretary of Agriculture, since there was present more than 1 cherry pit per 20 ounces of net contents and the packages or labels did not bear a plain and conspicuous statement, as prescribed by the Secretary of Agriculture indicating that it fell below such standard.

On June 3, 1940, no claimant having appeared, judgments of condemnation were entered and the article was ordered distributed to a charitable institution.

PAUL V. MCNUTT, *Administrator.*

31091. Adulteration of frozen strawberries. U. S. v. William G. Allen (Allen Fruit Co.). Plea of guilty. Fine, $25 and costs. (F. & D. No. 42747. Sample No. 36597–D.)

This product consisted in part of moldy berries.

On September 16, 1939, the United States attorney for the Western District of Washington, acting upon a report by the Secretary of Agriculture, filed an information against William G. Allen, trading as Allen Fruit Co., Salem, Oreg., alleging shipment by said defendant in violation of the Food and Drugs Act, on or about March 4, 1939, from the State of Washington into the State of Oklahoma, of a quantity of strawberries which were adulterated.

The article was alleged to be adulterated in that it consisted in whole or in part of a decomposed vegetable substance.

On March 11, 1940, a plea of guilty was entered by the defendant and the court imposed a fine of $25 and costs.

PAUL V. MCNUTT, *Administrator.*

31092. Adulteration of butter. U. S. v. The Valley Creamery, Inc. Plea of guilty. Fine, $25 and costs. (F. & D. No. 42780. Sample No. 60634–D.)

This product contained less than the required 80 percent of milk fat.

On November 13, 1939, the United States attorney for the Western District of Virginia, acting upon a report by the Secretary of Agriculture, filed in the district court an information against the Valley Creamery, Inc., Harrisonburg, Va., alleging shipment by said defendant in violation of the Food and Drugs Act, on or about May 21, 1939, from the State of Virginia into the State of New York, of a quantity of butter.

The article was alleged to be adulterated in that a product which contained less than 80 percent by weight of milk fat had been substituted for butter, a product which should contain not less than 80 percent by weight of milk fat.

On March 28, 1940, a plea of guilty was entered on behalf of the defendant and the court imposed a fine of $25 and costs.

PAUL V. MCNUTT, *Administrator.*

31093. Adulteration and misbranding of herring roe. U. S. v. B. A. Griffin Co., Inc., and Bennett A. Griffin. Plea of nolo contendere to count I and plea of guilty to count II entered by Bennett A. Griffin on behalf of himself. Fine, $100. Action against B. A. Griffin Co., Inc., dismissed. (F. & D. No. 42754. Sample No. 35010–D.)

The product covered by this case was found to be filthy and decomposed. It also was falsely labeled with respect to the name of the packer and the place at which it was packed.

On November 20, 1939, the United States attorney for the District of Maine, acting upon a report by the Secretary of Agriculture, filed an information against the B. A. Griffin Co., Inc., and Bennett A. Griffin, alleging shipment by said defendants in violation of the Food and Drugs Act, on or about October 29, 1938, from the State of Maine into the State of Virginia, of a quantity of herring roe which was adulterated and misbranded. The article was labeled in part: "Thomas Brand Herring Roe."

Adulteration was alleged in count I of the information in that the article consisted in whole or in part of a filthy and decomposed animal substance.

Misbranding was alleged in count II in that the statement, "Selected And Packed By Hand On The Fishing Shore at Weems, Va. by S. C. Thomas, Weems, Va.," borne on the can labels, was false and misleading and was borne on the said labels so as to deceive and mislead the purchaser in that the said statement represented that the article was produced and packed at Weems, Va., by

S. C. Thomas; whereas it was produced and packed at Eastport, Maine, by Bennett A. Griffin.

On June 4, 1940, Bennett A. Griffin, on behalf of himself, entered a plea of nolo contendere to the first count and a plea of guilty to the second count, and was fined $100. On the same date the action against B. A. Griffin Co., Inc., was dismissed by order of the court.

PAUL V. MCNUTT, *Administrator.*

31094. Misbranding of alfalfa meal. U. S. v. Saunders Mills, Inc. Plea of nolo contendere. Judgment of guilty. Fine, $200 and costs. (F. & D. No. 42786. Sample No. 4868–D.)

This product contained less crude protein and more crude fiber than was declared on the label.

On December 14, 1939, the United States attorney for the Northern District of Ohio, acting upon a report by the Secretary of Agriculture, filed in the district court an information against the Saunders Mills, Inc., Toledo, Ohio, alleging shipment by said defendant in violation of the Food and Drugs Act, on or about June 5, 1939, from the State of Ohio into the State of Maryland, of a quantity of alfalfa meal that was misbranded. The article was labeled in part: (Tag) "Dehydrated Alfalfa Meal."

Misbranding was alleged in that the statements, "Crude Protein, not less than 17.0 per cent" and "Crude Fibre, not more than 27.0 per cent," borne on the tag, were false and misleading and were borne on said tag so as to deceive and mislead the purchaser since the article contained not more than 13.08 percent of crude protein and not less than 35.82 percent of crude fiber.

On June 29, 1940, a plea of nolo contendere having been entered on behalf of the defendant, the court found the defendant guilty without intent and imposed a fine of $200 and costs.

PAUL V. MCNUTT, *Administrator.*

31095. Adulteration of frozen eggs. U. S. v. Armour & Co. Plea of guilty. Fine, $50 and costs. (F. & D. No. 42536. Sample No. 16402–D.)

This product was found to be in part decomposed.

On July 7, 1938, the United States attorney for the Western District of Kentucky, acting upon a report by the Secretary of Agriculture, filed in the district court an information against Armour & Co., a corporation, trading as Armour Creameries at Louisville, Ky., alleging shipment by said defendant in violation of the Food and Drugs Act as amended, on or about January 15, 1938, from the State of Kentucky into the State of Pennsylvania, of a quantity of frozen eggs that were adulterated.

The article was alleged to be adulterated in that it consisted in whole or in part of a decomposed animal substance.

On October 10, 1938, a plea of guilty was entered on behalf of the defendant and the court imposed a fine of $50 and costs.

PAUL V. MCNUTT, *Administrator.*

31096. Misbranding of canned tomatoes. U. S. v. 389 Cases of Tomatoes. Consent decree of condemnation. Product ordered released under bond for relabeling. (F. & D. No. 45572. Sample No. 82075–D.)

This product was substandard because it was not normally colored, and it was not labeled to indicate that it was substandard.

On October 24, 1939, the United States attorney for the Western District of Oklahoma, acting upon a report by the Secretary of Agriculture, filed a libel against 389 cases of tomatoes at Norman, Okla., alleging that the article had been shipped in interstate commerce on or about September 29, 1939, by Hargis Canners, Inc., from Fayetteville, Ark.; and charging that it was misbranded. The article was labeled in part: "Nu Crest Brand Tomatoes Packed for Recorg Supply Corporation, Chicago, Illinois."

The article was alleged to be misbranded in that it was canned food and fell below the standard of quality and condition promulgated by the Secretary of Agriculture in that it was not normally colored, and its label did not bear a plain and conspicuous statement, as prescribed by the Secretary of Agriculture, indicating that it fell below such standard.

On October 27, 1939, the Hargis Canners, Inc., claimant, having admitted the allegations of the libel, a consent decree of condemnation was entered and the article was ordered released under bond conditioned that it be relabeled in compliance with the law.

PAUL V. MCNUTT, *Administrator.*

31097. Misbranding of canned apricots. U. S. v. 92 Cases of Apricots. Decree of condemnation. Product released under bond to be relabeled. (F. & D. No. 45599. Sample No. 70467–D.)

This product was substandard because the fruit was not of normal size and the units were not uniform in size, and it was not labeled to indicate that it was substandard.

On March 1, 1940, the United States attorney for the Northern District of Texas, acting upon a report by the Secretary of Agriculture, filed a libel against 92 cases of apricots at Lubbock, Tex., alleging that the article had been shipped in interstate commerce on or about August 8, 1939, by H. D. Olson, from Ogden, Utah; and charging that it was misbranded. The article was labeled in part: "Craig's Royal Brand Standard Apricots Packed by Wm. Craig Canning Co., Ogden, Utah."

It was alleged to be misbranded in that it was canned food and fell below the standard of quality and condition promulgated by the Secretary of Agriculture since the fruit was not of normal size and the units were not of uniform size, and its package or label did not bear a plain and conspicuous statement as prescribed by the Secretary of Agriculture indicating that it fell below such standard.

On May 15, 1940, H. D. Olson, Ogden, Utah, having appeared as claimant and having admitted the allegations of the libel, judgment of condemnation was entered and the article was ordered released under bond on condition that it be relabeled in compliance with the law.

PAUL V. MCNUTT, *Administrator.*

31098. Adulteration and misbranding of jams. U. S. v. 35 Cases of Assorted Jams. Consent decree of condemnation. Products ordered released under bond for relabeling. (F. & D. No. 44643. Sample Nos. 35851–D, 35852–D, 35853–D.)

These jams were found to contain apple in addition to the fruit indicated on the labels.

On January 9, 1939, the United States attorney for the District of Connecticut, acting upon a report by the Secretary of Agriculture, filed a libel against 35 cases of assorted jams at New London, Conn., alleging that the article had been shipped in interstate commerce on or about January 3, 1939, from Fort H. G. Wright, N. Y.; and charging that they were adulterated and misbranded. The articles were labeled in part: "Nature's Own Pure Raspberry [or "Strawberry" or "Peach"] Jam Manufactured by Fresh Grown Preserve Corp. Brooklyn, New York."

The articles were alleged to be adulterated in that apple had been substituted in whole or in part for the said articles.

They were alleged to be misbranded in that the statements on the labels, "Pure Raspberry Jam," "Pure Strawberry Jam," and "Pure Peach Jam," were false and misleading and tended to deceive and mislead the purchaser when applied to products containing apple. They were alleged to be misbranded further in that they were imitations of and were offered for sale under the distinctive names of other articles.

On June 3, 1940, the Fresh Grown Preserve Corporation, claimant, having admitted the allegations of the libel, judgment of condemnation was entered, and it was ordered that the products be released under bond conditioned that they be relabeled in accordance with the requirements of the law.

PAUL V. MCNUTT, *Administrator.*

31099. Adulteration of nutmegs. U. S. v. B. H. Old & Co., Inc. and Harry J. Schlichting. Pleas of guilty. Corporation fined $100. Harry J. Schlichting fined $50. (F. & D. No. 39787. Sample No. 26766–C.)

The product involved in this case was in whole or in part filthy and decomposed.

On March 2, 1939, the United States attorney for the District of New Jersey, acting upon a report by the Secretary of Agriculture, filed in the district court an information against B. H. Old & Co., Inc. and Harry J. Schlichting, an officer of the corporation, alleging that the said defendants had received from Holland and had caused to be delivered to a purchaser at Hoboken, N. J., a quantity of nutmegs that were adulterated. The information alleged further that the article had been shipped from Amsterdam, Holland, on or about July 23, 1936, by Schroder & Heil to Hoboken, N. J., and had been delivered by direction of the said B. H. Old & Co., Inc., in the original unbroken packages to the said purchaser at Hoboken, N. J. on October 3 and 5, 1936.

The article was alleged to be adulterated in that it consisted in whole or in part of a filthy and decomposed vegetable substance.

On February 1, 1940, pleas of guilty were entered by the defendants and the court sentenced B. H. Old & Co. to pay a fine of $100 and Harry J. Schlichting to pay a fine of $50.

PAUL V. MCNUTT, *Administrator.*

31100. Adulteration of red perch fillets. U. S. v. 101 Boxes of Red Perch Fillets. Default decree of condemnation, forfeiture, and destruction. (F. & D. No. 45353. Sample No. 58470–D.)

Examination showed that this article contained parasites.

On May 19, 1939, the United States attorney for the Southern District of Ohio, acting upon a report by the Secretary of Agriculture, filed in the district court a libel praying seizure of 101 boxes, each containing 10 pounds, of red perch fillets at Columbus, Ohio, alleging that the article had been shipped in interstate commerce on or about May 6, 1939, by T. & J. Busalacchi, Inc., from Boston, Mass.; and charging that it was adulterated in violation of the Federal Food and Drugs Act.

The article was alleged to be adulterated in that it consisted wholly or in part of a filthy animal substance.

On October 2, 1939, no claimant having appeared, a decree of condemnation and forfeiture was entered and the product was ordered destroyed.

PAUL V. MCNUTT, *Administrator.*

31101. Adulteration and misbranding of wheat gray shorts and ground wheat screenings. U. S. v. Rodney Milling Co. Plea of guilty. Fine, $100. (F. & D. No. 42783. Sample Nos. 5970–D, 5971–D.)

Wheat brown shorts and screenings had been substituted in whole or in part for wheat gray shorts and screenings in this shipment. Both lots contained larger percentages of crude fiber and one lot contained a smaller percentage of nitrogen-free extract than that declared.

On January 24, 1940, the United States attorney for the Western District of Missouri, acting upon a report by the Secretary of Agriculture, filed in the district court an information against Rodney Milling Co., a corporation, Kansas City, Mo., alleging shipment by said defendant on or about April 8 and 10, 1939, from the State of Missouri into the State of Kansas of quantities of the above-named product which was adulterated and misbranded in violation of the Food and Drugs Act. The article was labeled in part: (Tag) "Jersey Wheat Gray Shorts & Ground Wheat Screenings."

The article was alleged to be adulterated in that wheat brown shorts and screenings had been substituted in whole or in part for wheat gray shorts and screenings.

Misbranding was alleged in that the statements, "Wheat Gray Shorts & Ground Wheat Screenings * * * Crude Fibre, not more than 6.00," with respect to both shipments, and the statement "Nitrogen-free Extract, not less than 55.00" with respect to one shipment, borne on the tags, were false and misleading and were borne on the said tags so as to deceive and mislead the purchaser since the article did not consist of wheat gray shorts and ground wheat screenings but did consist in whole or in part of wheat brown shorts and ground wheat screenings; it contained more than 6 percent of crude fiber, the two shipments having been found to contain 6.89 percent and 6.76 percent of crude fiber, respectively; and one lot contained less than 55 percent of nitrogen-free extract, namely, not more than 53.11 percent.

On April 4, 1940, a plea of guilty was entered on behalf of the defendant and the court imposed a fine of $100 and costs.

PAUL V. MCNUTT, *Administrator.*

31102. Misbranding of canned red pitted cherries. U. S. v. 5 Cases of Canned Cherries. Default decree of condemnation. Product ordered delivered to a charitable institution. (F. & D. No. 45604. Sample No. 6214–E.)

This product was substandard because of the presence of excessive pits and it was not labeled to indicate that it was substandard.

On April 22, 1940, the United States attorney for the District of New Mexico, acting upon a report by the Secretary of Agriculture, filed in the district court a libel against five cases of canned cherries at Albuquerque, N. Mex., alleging that the article had been shipped in interstate commerce on or about September 13, 1939, by Curtiss Clymer from Monte Vista, Colo.; and charging that it was

misbranded in violation of the Food and Drugs Act. The article was labeled in part: "Ray Way Brand Water Packed Pitted Cherries Packed by Ray A. Ricketts Co., Canon City, Colo."

It was alleged to be misbranded in that it was canned food and fell below the standard of quality and condition promulgated by the Secretary of Agriculture since there was present more than 1 cherry pit per 20 ounces of net contents and its package or label did not bear a plain and conspicuous statement prescribed by the Secretary of Agriculture indicating that it fell below such standard.

On May 25, 1940, no claimant having appeared, judgment of condemnation was entered and the product was ordered delivered to a charitable institution.

PAUL V. MCNUTT, *Administrator.*

31103. Misbranding of canned peas. U. S. v. 360 Cases of Canned Peas. Decree of condemnation. Product released under bond to be relabeled. (F. & D. No. 45605. Sample No. 2706–E.)

This product was substandard because the peas were not immature, and it was not labeled to indicate that it was substandard.

On April 17, 1940, the United States attorney for the District of Massachusetts, acting upon a report by the Secretary of Agriculture, filed a libel against 360 cases of canned peas at Springfield, Mass., alleging that the article had been shipped in interstate commerce on or about March 12, 1938, by the Melrose Canning Co., from Greenmount, Md.; and charging that it was misbranded in violation of the Food and Drugs Act. The article was labeled in part: "Loveland Garden Peas."

It was alleged to be misbranded in that it was canned food and fell below the standard of quality and condition promulgated by the Secretary of Agriculture since the peas were not immature and its package or label did not bear a plain and conspicuous statement prescribed by the Secretary of Agriculture indicating that it fell below such standard.

On May 27, 1940, the Melrose Canning Co. having appeared as claimant and having admitted the allegations of the libel, judgment of condemnation was entered and the product was ordered released under bond conditioned that it be relabeled as required by law.

PAUL V. MCNUTT, *Administrator.*

31104. Misbranding of canned peas. U. S. v. 638 Cases of Canned Peas. Consent decree of condemnation. Product released under bond to be relabeled. (F. & D. No. 45614. Sample No. 8114–E.)

This product was substandard because the peas were not immature, and it was not labeled to indicate that it was substandard.

On May 25, 1940, the United States attorney for the District of Minnesota, acting upon a report by the Secretary of Agriculture, filed a libel against 638 cases of canned peas at Minneapolis, Minn., alleging that the article had been shipped in interstate commerce, from Plymouth, Wis., in part on or about September 22, 1937, by A. N. Meyers, broker for Knellsville Canning Co. and in part on or about October 5, 1937, by Knellsville Canning Co.; and charging that it was misbranded in violation of the Food and Drugs Act. The article was labeled in part: "Win-All Brand Size 4 Wisconsin Early Variety Peas packed by Knellsville Pea Canning Co. Port Washington, Wisconsin."

The article was alleged to be misbranded in that it was canned food and fell below the standard of quality and condition promulgated by the Secretary of Agriculture, since the peas were not immature and its package or label did not bear a plain and conspicuous statement prescribed by the Secretary of Agriculture indicating that it fell below such standard.

On July 5, 1940, the Kildall Co., Minneapolis, Minn., claimant, having admitted the allegations of the label and having consented to the entry of a decree, judgment of condemnation was entered and the product was ordered released under bond conditioned that it be relabeled in the manner required by law.

PAUL V. MCNUTT, *Administrator.*

31105. Misbranding of canned cherries. U. S. v. 96 Cases of Canned Cherries. Decree of forfeiture. Product released under bond to be relabeled. (F. & D. No. 45581. Sample No. 66793–D.)

This product was substandard because of the presence of excessive pits, and it was not labeled to indicate that it was substandard.

On January 2, 1940, the United States attorney for the District of Kansas, acting upon a report by the Secretary of Agriculture, filed in the district

court a libel against 96 cases of canned cherries at Hutchinson, Kans., alleging that the article had been shipped in interstate commerce on or about August 19, 1939, by the Western Canning Co. from La Junta, Colo.; and charging that it was misbranded in violation of the Food and Drugs Act. The article was labeled in part: "Colo-Red Brand Water Pack Red Pitted Cherries."

It was alleged to be misbranded in that it fell below the standard of quality and condition promulgated by the Secretary of Agriculture for such canned food since the fruit was not pitted, and its package or label did not bear a plain and conspicuous statement prescribed by the Secretary of Agriculture indicating that it fell below such standard.

On March 12, 1940, the Western Canning Co., having appeared as claimant and having admitted the allegations of the libel, judgment of forfeiture was entered, and the product was ordered released under bond conditioned that it be relabeled under the supervision of the Food and Drug Administration.

PAUL V. MCNUTT, *Administrator.*

INDEX TO NOTICES OF JUDGMENT 31076–31105

[1] Contains an opinion of the court.
[2] Contains instructions to the jury.

U. S. GOVERNMENT PRINTING OFFICE: 1940